IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018
Pronounced on : 05.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.16188 to 16191 of 2011
and
M.P.Nos.1, 1, 1 & 1 of 2011

1.M/s.MUV TECHNOLOGIES Limited.,
3, IIRD Floor TAAS MAHAL BUILDING,
Egmore, Chennai - 600 002.

2.Rajesh Shah
S/o.V.S.Shah. ...Petitioners/Accused 1 & 2 in all Crl.O.P.Nos.

Vs.

The Deputy Registrar of Companies, Tamil Nadu,
Having Office at Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006. ... Respondent/Complainant in all Crl.O.P.Nos.

COMMON PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to E.O.C.C.Nos.155, 156, 157 and 158 of 2011 respectively on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences, Egmore, Chennai and quash the same as against the petitioners.

For Petitioners (in all Crl.O.P.Nos.) : Mr.S.Shanmugavelayutham for Mr.T.Vijayaraghavan

For Respondent (in all Crl.O.P.Nos.) : Mr.M.Dhamodharan

O R D E R

The petitioners in Crl.O.P.No.16188 of 2011 are accused Nos.1 and 2 in a complaint filed by the Deputy Registrar of Companies, Tamil Nadu in EOCC No.155 of 2011, which is pending trial on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai for the offences under Section 159 r/w 162 of the Companies Act.

2.The petitioners in Crl.O.P.No.16189 of 2011 are the accused Nos.1 and 2 on the private complaint filed by the Deputy Registrar of Companies, Tamil Nadu in EOCC No.156 of 2011, which is pending trial on the file of Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai for the offences under Section 220 r/w Section 162 of the Companies Act 1956.

3.The petitioners in Crl.O.P.No.16190/2011 are the accused Nos.1 and 2 on a complaint filed by the Deputy Registrar of Companies, Tamil Nadu in EOCC No.157 of 2011, which is pending trial on the file of Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai for the offences under Section 159 r/w Section 162 of the Companies Act.

4.The petitioners in Crl.O.P.No.16191 of 2011 are the accused Nos.1 and 2 in a complaint filed by the Deputy Registrar of Companies, Tamil Nadu in EOCC No.158 of 2011, which is pending trial on the file of Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai for the offences under Sections 220 r/w Section 162 of the Companies Act 1956.

5.Since the petitioner and the accused are common and the points involved in all these cases are similar, I have decided to dispose of all the above Criminal Original Petitions by way of a common order. For the sake of clarity and brevity the petitioners are referred as "Accused" and the respondent is referred as "Complainant" as found in the complaint.

6.The complaint is that the 1st accused company was incorporated on 18.01.2000 under the Companies Act, 1956 represented by the 2nd accused, who is the Managing Director. The Annual General Meeting of the company for the financial year 31.03.2006 should have been held by 30.09.2006 and the annual returns to be filed within 60 days i.e,. on or before 29.11.2006 and in this case the accused had not conducted any annual general meeting and failed to file the returns on the due date and thereby committed an offence under Section 159 of the Act, which is punishable under Section 162 of the Act. Likewise, for the financial year ending 31.03.2007, Annual General body meeting was not conducted and the returns were not filed with the complainant. Crl.O.P.No.16188 of 2011 and Crl.O.P.No.16190 of 2011 are filed against cases for violation of Companies Act under Section 159 for the financial year 2006-2007.

7.Crl.O.P.No.16189 of 2011 and Crl.O.P.No.16191 of 2011 are filed against cases for violation of Section 220 of the Companies Act, since the accused failed to perform the statutory obligations for non filing of balance sheet and profit & loss account in the prescribed form for the financial year 2006-2007, which should have been filed on or before 30.10.2006 and 30.10.2007 respectively. Hence, the complainant had filed a complaint punishable under Section 162 of the Companies Act.

8.In all the cases, the Complainant had sent show cause notice on 30.07.2008 and no reply to the show cause notice was submitted by the accused. As per section 162 penalty and interpretation "If a company fails to comply with any of the provisions contained in Section 159, 160 or 161, the company, and every officer of the company who is in default shall be punishable with fine which may extend to (five hundred rupees) for every day during which the default continues" .

(2) For the purposes of this section and sections 159, 160, and 161, the expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act.

9.The further averments in the complaint is that since the offences under Section 159 and Section 220 are continuing offence within the meaning of Section 472 of the Code of Criminal Procedure no question of limitation would arise. Admittedly, all the complaints came to be filed during June 2011.

10.The contention of the petitioner is that the penalty for violation of provisions under Sections 159 and 220 of the Companies Act has been provided under Section 162. A close reading of the section would show that whoever is in default shall be punishable with fine, which may extended to Rs.500/- for every day during which the default continues.

11.For the purpose of better understanding Section 472 is extracted below:

472.Continuing Offence:"In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues".

12.Likewise Section 468 is extracted below:

468. Bar to taking cognizance after lapse of the period of limitation: (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation , in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the the case may be, the most severe punishment.]

13.These two sections fall under chapter XXXVI of the Code of Criminal Procedure with the heading Limitation for taking cognizance of certain offences. As per section 468 of the Code of Criminal Procedure Code, which is a non absentee clause wherein it has categorically held that no court shall take cognizance of an offence after the expiry of the period of limitation. The period of limitation shall be 6 months if the offence is punishable with fine only. In this case, the cause of action as per the complainant as could be found in the complaint would commence after issuance of show cause notice dated 30.07.2008. The complaint in all the four cases have been filed only during June 2011, which is well after three years from the date of issuance of the show cause notice hence the complaint has to be quashed.

14.The other contention of the petitioner is that the offences under Sections 159 and 220 are punishable under Section 162 of the Companies Act for default in filing the annual returns and Profit & Loss Account that within a stipulated time that does not render the initial default a continuing one. The offence cannot be said to be repeated or committed from day to day after the initial default. It is only where the offence is committed from day to day or repeated from day to day, then in that event only it can be called a continuing offence. The language of section 162 does not warrant any continuity as they are in sections 234, 294, 372 and 598 of the Companies Act.

15.The petitioner in support of his contention relied upon the following decisions:

1.Apex Court in the case of STATE OF BIHAR VS. DEOKARAN NENSI reported in AIR 1973 SC 908;

2.CALCUTTA HIGH COURT in the case of NIRPENDRA KUMAR GHOSH VS. REGISTRAR OF COMPANIES AND OTHERS reported in 1984 CJ (CAL) 191;

3)In the case of CENTRAL MANBHUM COAL COMPANY PVT.LTD., AND OTHERS VS. ASST.REGISTRAR OF COMPANIES AND OTHERS reported in 1984 CJ (CAL) 45.

16.The Apex court in the case of STATE OF BIHAR VS. DEOKARAN NENSI reported in AIR 1973 SC 908, dwelled upon the distinction between two kinds of offences that an act or revision which constitutes an offence once and for all and an act of omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. Further held that in case of continuing offence there is ingredient of continuous of offence, which is absent in the case of an offence which take place when an act or omission is committed once and for all. As far as the case in hand are concerned, the case of the complainant is that the complainant had failed to file annual returns and profit and loss account for the year ending 31.03.2006 and 31.03.2007 for which the show cause notice was issued on 30.07.2008. Thus, the complainant is certain that as far as the complaint is concerned the cause of action arose on 30.07.2008 and as per section 162 of the Companies Act fine alone can be imposed as per section 468 of the Code of Criminal Procedure for an offence punishable with fine the period of limitation is only six months. In this case the complaint has been filed three years after the show cause notice i.e, during June 2011.

17.Relying upon the decision of this Apex Court the Calcutta High Court had categorically held that "In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all". Further, it had held that as per section 159 of the Companies of the Act failure to obey or comply with the rule or its requirement involves a penalty, which continues until the rule or its requirement is obeyed or complied with. Further held that section 159 of the Companies Act does not impose any liability which so continues. The offence on the breach there of is complete with the failure to furnish the return in the manner or within the time stipulated such an offence is committed once and for all as and when one commits the default the same analogy could be drawn with regard to Section 220 of the Companies Act for failure of filing Profit and Loss Account. Further it is held that the above provisions does not contemplate that the obligation to submit such returns continues from day to day until the return is actually submitted nor does it provides that continuance of business without filing of such returns is prohibited so that non fulfillment of a continuing obligation or continuing business without filing of such returns becomes a continuing offence.

18.The learned Senior counsel fairly submitted and brought to the notice of this court that the decision of this court in the case of the ASSITANT REGISTRAR OF COMPANIES TAMIL NADU VS. M/s.PREMIER SYNTHETIC PVT.LTD., AND TWO OTHERS in that case this court had taken up a batch of Revision petitions filed by the Registrar of Companies wherein the complaints were returned by the Magistrate since it was time barred and Further, on re-presentation with an endorsement that the offence as per the complaint are continuing offence. To this re-presentation the

Magistrate did not agree and dismissed the complaint against which the revision had been filed. While disposing of the revision, it has been held that the view of the learned Magistrate that the offence U/s.159 and 220 is a continuing offence and once an offence is done it is completed for all practical purposes on the day itself is opposed to settle position of law and had referred to the following decision:

1)1987 Law Weekly Crl.501 - KALAIMAGAL CORPORATION LTD., TUTICORIN AND OTHERS.

2)1988 Law Weekly Crl.181 - DHANALAKSHMI CHEMICAL INDUSTRIES PVT.LTD., and Others Vs. Assistant Registrar of Companies, Madras;

3)1993 LW Crl.434 Jagannathan and 2 others V. Assistant Registrar of Companies.

19.Uniformity in all Judgments is that the offences complained of in these complaint are continuing offences and therefore the period of Limitation prescribed in law is not attributed. In view of the settled position of Law. The petitioners contention are not sustainable and rejected.

20.Accordingly, these Criminal Original Petitions stand dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ah
To
1.The Additional Chief Metropolitan Magistrate,
Economic Offences,
Egmore, Chennai.

2.The Deputy Registrar of Companies, Tamilnadu,
Having Office at Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.T.Vijayaraghavan, Advocate, S.R.No.68906

Crl.O.P.Nos.16188 to 16191 of 2011

VGII(CO)
GSP(01/11/2018)