

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.2095 & 2096 of 2011
and
M.P.Nos.1, 1, 2 & 2 of 2011

G.Swaminathan,
S/o.Govindaswamy.

... Petitioner/A4
(in both Crl.O.P.Nos.)

Vs.

The Registrar of Companies,
Government of India,
Ministry of Corporate Affairs,
No.23, Elango Nagar,
III Cross, 1st Floor,
Pondicherry - 605 001.

... Respondent/Complainant
(in both 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 in STR. Nos.132 & 133 of 2010 respectively on the file of the Judicial Magistrate Court No.I at Pondicherry, quash all further proceedings as against the petitioner/accused.

For Petitioner : Mr.A.Venkatesh Kumar for
(in both Crl.O.P.Nos.) M/s.Gupta and Ravi

For Respondent : Mr.Venkataswamy Babu
(in both Crl.O.P.Nos.)

C O M M O N O R D E R

Crl.O.P.No.2095 of 2011 is filed to quash the proceedings against the petitioner/A4 in STC.No.133 of 2010 for the offences under Section 159 r/w Section 162 of the Companies Act.

2.Crl.O.P.No.2096 of 2011 is filed to quash the proceedings against the petitioner/A4 in STC.No.132 of 2010 pending on the file of the Chief Judicial Magistrate, Pondicherry to quash the proceedings for the offences under Section 220 r/w 162 of the Companies Act, 1956.

3.Since the petitioner and the respondent are one and the same and the issue arising out in these Criminal Original Petitions are of same cause of action and hence, a common order is being passed.

4.The contention of the petitioner is that the petitioner, who was the Director of PNL Nithi Limited, a Public Limited Company incorporated under the Companies Act as a Non Banking Financial Company. The petitioner had resigned from the Board of Director of the company on 05.06.2004 and Form-32 has been filed with the Registrar of Companies on 07.06.2004 in document No.253/07.06.2004.

5.The contention of the respondent/complainant is that the PNL Nithi is a registered company and the accused Nos.2 to 5 are its Directors. The petitioner is one of the Director, who has been arrayed as A4 for the financial year 2004. The Annual General Meeting ought to have been held latest by 26.12.2004 and the Annual Report ought to have been filed within 60 days i.e. on or before 23.02.2005.

6.The accused company had not filed the annual report made upto 26.12.2004 before the complainant, despite the issue of show cause notice dated 04.09.2009. The show cause notice has been returned undelivered with postal endorsement "Left", since, the accused had not filed the annual report for the financial year 2003-2004 and according to the provisions of Section 220 of the Act, the Company and its Directors are under Statutory obligation to file three copies of Balance Sheet and Profit and Loss Accounts within thirty days of placing the same in the Annual General Meeting. In this case, the Annual General Meeting was not held, Annual Returns were not filed and Balance Sheet and Profit and Loss Accounts were not placed. Hence, the accused had committed the offence under Section 159 r/w 162 of the Companies Act, 1956 and Section 220 of the Companies Act.

7.He further contended that the offence occurred in the financial year 2003-2004 and the petitioner had resigned only on 05.06.2004 and as per Section 168 of the Companies Act every officer of the Company who is in default shall be punishable and hence, the petitioner is liable to be punished.

8.Per contra, the learned counsel for the petitioner submits that as per the companies Act the company which is a dominant class, which has been categorically stated that if the concerned Director/person is able to prove that he had taken effective steps and he may not be proceeded against the petitioner having resigned on 05.06.2004 and the same have been filed before the Registrar of Companies on 07.06.2004, the petitioner thereafter

have nothing to do with the affairs of the company. It is an admitted case that the show cause notice issued only on 04.09.2009 by the respondent nearly five years after the petitioner had resigned from the company, hence, he cannot held upon.

9.Further, he submitted that taking the complaint as a whole and going through the same it is apparent that except for a bald allegation against the petitioner, there is no specific averments against the petitioner.

10.In view of the same, this Court finds that the continuance of the proceedings against the petitioner is unwarranted. Hence, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Pondicherry.

2.The Registrar of Companies,
Government of India,
Ministry of Corporate Affairs,
No.23, Elango Nagar,
III Cross, 1st Floor,
Pondicherry - 605 001.

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to M/S.Venkataswamy Baby, Advocate Sr.67556, 67557

Cr1.O.P.Nos.2095 & 2096 of 2011

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srg 28/12/2018