

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2018
Pronounced on : 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9917 of 2011
and
M.P.No.1 of 2011

T.B.Narayanaswamy Petitioner/Accused No.8
Vs.

The Assistant Registrar of Companies,
Shastri Bhavan,
Chennai - 600 006. Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of E.O.C.C.No.484 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 petitioner herein.

For Petitioner : Mr.J.Ashok for Mr.S.Raghunathan

For Respondent : Mr.K.Ramanamoorthy
Central Government Counsel

O R D E R

This Criminal Original Petition is filed to quash the proceedings as against the petitioner in E.O.C.C.No.484 of 2009, which is pending trial on the file of the Additional Chief Metropolitan Magistrate Court, E.O.II, Egmore, Chennai.

2.The petitioner has been arrayed as A8. The prosecution case in short is that M/s. Sporting Passtime India Limited, A1-Company (herein after referred to as "the Company") registered under Companies Act, 1956 and its Directors are arrayed as A2 to A8. The Company was inspected under Section 237 (b) of the Companies Act. When the inspection was conducted, the respondent issued notice dated 05.06.2007 to the petitioner. During the course of the inspection, it was found that the provisions under Section 143(1) of the Act has not been followed in violation of the Companies Act. Hence, they are

punishable under Section 143 (2) of the Companies Act. The show cause notice dated 18.01.2008 has been issued by the respondent and thereafter, the complaint came to be filed.

3.The learned counsel for the petitioner submits that on 18.08.2004, the petitioner had resigned as Director of the said Company and thereafter he has nothing to do with the A1 Company. On 05.06.2007, the respondent issued a show cause notice to the petitioner, for which a detailed reply was sent by the petitioner on 18.07.2007, wherein he had replied for all the issues raised, thereafter, another show cause notice was issued by the respondent on 18.01.2008, for this to a reply was sent by the petitioner on 27.02.2008. Thus, the petitioner has been diligent in replying to the show cause notice, whereby he had categorically stated about his resignation from the Company and also why the proceedings against him is bad in law.

4.This Court by order dated 19.10.2016 in Crl.O.P.No.18857 of 2010 had quashed the proceedings as against the accused Nos.5 to 7 in E.O.C.C.No.484 of 2009 pending on the file of the Additional Chief Metropolitan Magistrate Court, E.O.-II, Egmore, Chennai. The issue and the cause of action are one and the same and the relevant paragraphs are extracted hereunder:

"6.It may be relevant to state here that Sporting Passtime India Ltd. has not been arrayed as an accused in this prosecution for the reasons best known to the complainant.

7.The learned counsel for the petitioners contended that the petitioners had resigned from the Directorship of Sporting Passtime India Ltd. as early as 18.08.2004 and inspection appears to have been done only in 2007. The show cause notice was issued on 18.01.2008 which is well over three years after the petitioners had resigned from the Directorship.

8.This Court gave its anxious consideration to the rival submissions.

9.The fact that the petitioners had resigned from Sporting Passtime India Ltd. is evident from Form 32 filed by the petitioners in the typed set of papers. Neither in the show cause notice nor in the complaint, the complainant has stated as to when the inspection was conducted. Admittedly, the show cause notice was issued only on 18.01.2008.

In view of the above, the prosecution of the petitioners in E.O.C.C.No.484 of 2009

pending on the file of the Additional Chief Metropolitan Magistrate, E.O.-II, Egmore, Chennai is quashed and this Criminal Original Petition is allowed. Connected M.P. is closed."

5.The learned counsel for the petitioner submits that this petitioner is also on the same footing and prayed to quash the proceedings of the Lower Court. On considering the materials and submissions this Court finds that the petitioner is entitled for the relief sought for.

6.Accordingly, the proceedings in E.O.C.C.No.484 of 2009 as against the petitioner/A8 pending on the file of the Additional Chief Metropolitan Magistrate Court, E.O.-II, Egmore, Chennai is quashed and this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai.
- 2.The Assistant Registrar of Companies, Shastri Bhavan, Chennai - 600 006.

+lcc ot Mr.S.Raghunathan, Advocate Sr.67255

+lcc to Mr.K.Ramanamoorthy, Advocate Sr.67358

Cr1.O.P.No.9917 of 2011

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srg 30/10/2018