IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2019
PRONOUNCED ON : 26.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
CRL.OP.No.654 of 2012
and
M.P.Nos.1 & 3 of 2012

1.Dinesh Dalmia

2.Deepak Bhalotia

3.Shiw Kumar Agarwal ...Petitioners/Accused

Vs.

M.O. Roy ...Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records and to quash the complaint in C.C.No.118 of 2006 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences Court-I, Egmore, Chennai.

For Petitioners: Mr.Prakash Goklaney

For Respondent : Mr.G. Rajagopal,
Senior Counsel
for Mr.V.Venkatesan,
Senior Central Government
Standing Counsel

O R D E R

This petition has been filed by the accused Nos.2,4 and 5 to quash the proceedings against them in C.C.No.118 of 2006 on the file of Additional Chief Metropolitan Magistrate (Economic Offences Court-I) Egmore, Chennai.

2. The respondent herein had filed a complaint alleging that the first accused (A1) is a Public Limited Company incorporated under the Companies Act 1956 with its registered office at Chennai; that the second accused was a Managing Director of A1; that fourth and fifth accused are the Directors of A1; that the first accused Company was required to have a Managing Director or whole time Director or Manager at all

point of time; that first accused has failed to appoint a Managing Director or whole time and Director or a Manager for the period from 01.08.2003 to 31.12.2003 and thus the accused have violated the provision of Section 269 of the Companies Act r/w. Rule 10 A of the Companies (Central Government's) General Rules, 1959 and thereby committed the offence punishable under Section 629 A of the Companies Act, 1956.

3. Based on the aforesaid complaint, the learned Additional Chief Metropolitan Magistrate has taken the case on file in C.C.No.118 of 2011 and issued summons to the accused persons. After receipt of summons, the Accused Nos.2,4 and 5 have filed the present petition under Section 482 of Cr.P.C., to quash the proceedings against them in the aforesaid C.C.

4. Heard Mr.Prakash Goklaney, learned counsel for the petitioners and Mr.G.Rajagopal, learned Additional Solicitor General for Mr.V.Venkatesan, Senior Central Government Standing Counsel.

5. Learned counsel for the petitioners has submitted that the first accused Company is functioning from the year 1992. He further submitted that the second accused ceased to be the Managing Director on 31.07.2003 vide Form No.32 dated 09.02.2004. He further submitted that the third accused was appointed as a whole time Director on 01.04.2004 vide Form-32 dated 09.02.2004 which is within 90 days from appointment after approval from the Central Government. He further submitted that the violations ceased to exist as on 01.04.2004 when a whole time Director was appointed as per the requirement of the Companies Act. He further submitted that the limitation period for prosecuting the accused is six months from the date when the violation ceased to exist and therefore, the complaint which was filed in the month of August, 2006, is barred by limitation. He further submitted that the master circular issued by the Ministry of Company affairs also clarifies Section 5 of the Companies Act, that ordinary Directors should be prosecuted as officers in default only in the absence of Managing Director/whole time Director/Manager/Secretary and therefore he prayed to quash the proceedings against the petitioners herein.

6. Per contra, the learned Additional Solicitor General has submitted that as per sub-section (1) of Section 269 of the Companies Act, the first accused Company shall have Managing Director or whole time Director or a Manager. In this case, for the period from 01.08.2003 to 31.12.2003, the first accused company has failed to appoint the Managing Director or whole time Director or Manager. Therefore, the aforesaid act is punishable under Section 629 A of the Act. He further submitted that as per the aforesaid Section, the Company and every officer

of the company who is in default or such other person shall be punished with fine which may extend to Rs.5000/- or where the contravention is a continuing one, with a further fine of Rs.500/- every day after the first during which the contravention continues. He further submitted that the aforesaid offence is a continuing offence and therefore the complaint is not barred by limitation. He further submitted that a prima facie case is made out against the petitioners to proceed against them and therefore, he prayed to dismiss the petition.

7. In this case, in paragraph No.8 of the complaint, it is stated that the Company did not appoint the Managing Director or whole time Director or a Manager for the periods from 01.08.2003 to 31.12.2003 as required under Section 269 of the Companies Act. Further, it is stated that one Sri.S.Govinda Rajan was appointed as whole time Director with effect from 01.01.2004. So, it is clear that the aforesaid violation ceased to exist on 01.01.2004 itself. The offence under Section 269 of the Companies Act is punishable under Section 629-A of the said Act. As per the said Section, the Company and every officer of the Company who is in default or such other persons shall be punished with a fine which may extend to Rs.5000/- and where the contravention is a continuing one, with a further fine which may extend to Rs.500/- every day after the first during which the contravention continues. In this case, as already pointed out that on 01.01.2004 whole time Director was appointed and on that date itself, the said violation ceased to exist and as such if the respondent wanted to prosecute the Company and its officers for the aforesaid violation, he should have filed the complaint within six months from 01.01.2004 excluding the period which was taken for obtaining sanction. But the complaint was filed only in the month of August, 2006. Further though in paragraph No.10 of the complaint, it is stated that the Ministry of Company affairs vide its letter No.5/10/2005-CL II dated 01.05.2006 has accorded its sanction for filing case, no particulars furnished as to when the respondent/complainant had submitted the proposal for prosecution before the Ministry of Company affairs. So unless the respondent/complainant discloses in the complaint about the period which was taken for obtaining the sanction, the respondent/complainant cannot take a plea that the aforesaid period has to be excluded. In this case, the complaint does not disclose the period which was taken for obtaining sanction. If the proposal for the prosecution itself has been submitted after the expiry of six months from 01.01.2004, the period which has been taken for obtaining sanction for prosecution cannot be availed by the respondent/complainant. Therefore, this court is of the view that the complaint is barred by limitation. Accordingly, this court is inclined to allow this petition.

8. In the result, this petition is allowed. Consequently, connected miscellaneous petitions are closed. The proceedings against the petitioners herein in C.C.No.118 of 2006 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences Court-I, Egmore, Chennai, alone are quashed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

gv
To
1. The Additional Chief Metropolitan Magistrate Court,
   Economic Offences Court-I,
   Egmore, Chennai.

2. Do Thro Chief Metropolitan Magistrate, Chennai

+2 Ccs to Mr.PRakash Goklaney, Advocate sr 41055.
+1 CC to Dr.V. Venkatesan, Advocate sr 41484.

CRL.OP.No.654 of 2012
and
MP.Nos.1 & 3 of 2012

SPD(CO)
SP(30/07/2019)