

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Cr1.OP No.4311 of 2013

and

MP.Nos.1 & 2 of 2013

1.M/s.DSQ Software Limited (A1)

G.R.Complex, 407-408,
Mount Road, Nandanam,
Chennai-600 035.

2.Dinesh Dalmia (A2) ... Petitioners/Accused 1 & 2

- Vs -

The Deputy Registrar of Companies,
having office at
Shastri Bhavan, II Floor,
No.26, Haddows Road,
Chennai-600 006.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to quash the complaint in E.O.C.C.No.30 of 2004 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai.

For Petitioners : Mr.Prakash Goklaney

For Respondent : Mr.B.Rabu Manohar
SCGPC.

ORDER

This Criminal Original Petition has been filed to quash the complaint in E.O.C.C.No.30 of 2004 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai.

2. The respondent filed a complaint under Section 77 (4) of the Companies Act, 1956 before the learned Additional Chief Metropolitan Magistrate (Economic Offence), Egmore, Chennai-9. The learned Magistrate taken cognizance of the complaint in E.O.C.C.No.30 of 2004. During the pendency of the said case, the petitioner filed the present petition seeking to quash the complaint filed by the respondent in E.O.C.C.No.30 of 2004.

3. The learned counsel for the petitioners would submit that the punishment under Section 77(4) of The Companies Act is only fine and the limitation period to file a complaint is six months. In this case, the petitioner himself admitted that the inspection was started on 26.07.2001 and completed on 30.08.2001. The complaint filed in the year 2004 and therefore, the complaint is barred by limitation. The learned counsel placed reliance on the judgment of this Court in the case of N.Kumar Vs. M.O.Roy reported in Indian Kanoon-362386 in support of his contention.

4. The learned counsel for the respondent would submit that the irregularity came during inspection, subsequently, the auditor's report and immediately, they sent a show cause notice to the petitioner even in the year 2001 and the petitioner also sent a reply. Subsequently, they informed to the Central Government and the Central Government also received the reply in the year 2003. Thereafter, they issued the show cause notice on 17.09.2003. Therefore, it is not barred by limitation. Further, the auditor's report primarily indicated to the Government and they waited for the directions from the Central Government. After receiving the directions, they issued show cause notice. Therefore, it is not barred by limitation. The learned counsel placed reliance on the judgment of Karnataka High Court in the case of The Registrar of Companies in Karnataka Vs. Fairgrowth Agencies Limited reported in MANU/KA/8084/2006 in support of his contention.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the entire materials available on record.

6. Admittedly, the respondent filed a complaint against the petitioners before the learned Chief Additional Metropolitan Magistrate (Economic Offence), Egmore, Chennai-8 in E.O.C.C.No.30 of 2004. In page No.2 of the typed set of papers submitted by the learned counsel for the respondent, it is stated that the period of inspection was between 26.07.2001 to 03.08.2001. In the first show cause notice issued by the respondent to the petitioners, it is stated that during inspection, they found irregularities committed by the petitioners, which itself shows that the respondent came to know the allegations levelled against the complaint in the year 2001 itself. Immediately, they sent the show cause notice and received reply and subsequently, they have not taken action till 2003.

7. This Court finds that the respondent came to know about the allegations levelled in the complaint in the year 2001 itself, the punishment for the offence is only fine, hence, the complaint should have been filed within 6 months and therefore, the complaint is barred by limitation. The citations referred to by both the counsel are not applicable to the present case on hand. However, the limitation starts

only from the date of knowledge of the allegations and the respondent themselves admitted that the date of knowledge of the allegation is only during the inspection i.e., only in between 26.01.2001 to 03.08.2001. The complaint filed in the year of January 2004. Therefore, this Court is inclined to quash the proceedings. However, considering the serious nature of the allegation, the department shall take action against the petitioners within a period of six months. If the respondent finds that the petitioners committed offence in any other Act and it is in serious nature, the respondent is at liberty to file a criminal complaint against the petitioners.

8. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Additional Chief Metropolitan Magistrate,
Economic Offences-I,
Egmore, Chennai.
2. The Deputy Registrar of Companies,
Shastri Bhavan, II Floor,
No.26, Haddows Road,
Chennai-600 006.

+1cc to Mr.K.C.Vimal Sarathy, Advocate, S.R.No. 104430
+1cc to the Government Pleader, S.R.No. 104149

+1cc to Mr.K.C.Vimal Sarathy, Advocate,
S.R.No.104430(28/02/2020)

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MR(CO)
GN(11/02/2020)