

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5652 of 2018
and Crl.M.P.Nos.2798 & 2799 of 2018

1.M/s.Madras Flying Club Ltd.,
Meenambakkam Airport,
Chennai-27
2.Jacob Selvaraj
3.Kasiviswanathan Umashankar
4.Ratnam Paul Peterson Paulebenezer
5.Dokku Shaik Ameer Basha
6.Dilli Reddy BalaramanPetitioners

Vs.

1. The Deputy Registrar of Companies, Tamil Nadu,
Having office at Shastri Bhavan,
26, Haddows Road, Chennai - 600 006
2.R.Rajkumar
(2nd respondent is impleaded as per order
in Crl.M.P.No.4229 of 2018 in
Crl.O.P.No.5652 of 2018 dated 10.07.2018) Respondents

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records and quash the
E.O.C.C.No.570 of 2017 on the file of the Additional Chief
Metropolitan Magistrate, Economic Offences Court I, Egmore,
Chennai-8.

For Petitioners : Mr.S.Jeyaram

For RR1 : Mr.B.Ramesh,
Special Public Prosecutor

For RR2 : No Appearance

ORDER

This Criminal Original Petition has been filed to call for
the records and quash the E.O.C.C.No.570 of 2017 on the file of
the Additional Chief Metropolitan Magistrate, Economic Offences
Court I, Egmore, Chennai-8.

2. Mr.S.Jeyaram, the learned counsel for the petitioners would submit that the petitioners are the accused in EOCC.No.570 of 2017. The first petitioner was incorporated under the Companies Act in the name and style of Madras Flying Club Ltd. The petitioners 2 to 6 are the Directors of the first petitioner Company and are serving as an honorary employee without getting any honorarium or salary or profit and the activities of the company was purely non profit and non commercial. While being so, one Mr.Rajkumar was appointed as Secretary and thereafter he was terminated for the allegation that he involved in various criminal activities. His appointment was not ratified by the General Committee of the first petitioner Company and he had stolen the Minutes Book, Committee members Attendance Register, Ledgers(Accounts), Petty Cash Register, Office Seals and Letter heads of the company along with other documents. Therefore, complaint was lodged against him and case has been registered in Cr.No.304 of 2015 for the offences under Section 379, 506(ii) I.P.C. on the file of the Inspector of Police, S2 Airport Police Station. He further submitted that previous committee and the Directors of the first petitioner had filed returns from the year 2006 till the present committee members took charge as Directors of the company in the year 2015. Therefore, the petitioners 2 to 6 have no knowledge of non filing of returns before the respondent defacto complainant. Therefore, the respondent complainant had issued notice under Section 206(1) of the Companies Act, 2013 to the first petitioner on 21.04.2017. No reply from the first petitioner was sent and as such notice under Section 206(3) of the Companies Act, 2013 was issued on 08.05.2017 for which detail reply was sent by the first petitioner on 02.06.2017 and subsequently on 19.07.2017. Even after receipt of the same, the respondent complainant launched prosecution as against the company and directors alleging that the first petitioner Company failed to furnish any information or explanation or produce any documents required under this section, the company and every officer of the company, who is in default shall be punishable within a fine and to punish the petitioners under Section 206(7) of the Companies Act. He would further submit that whether the petitioners are responsible for the non compliance, there is absolutely no specific averments in the complaint that the petitioners 2 to 6 are the officers who are in default within the meaning of Section 2 (60)(vi) of the Company Act, 2013. There is absolutely no averment to that extent. Further he submitted that no specific averment in the complaint that registrar under proviso of Section 260(3) of the Companies Act had recorded his reasons for issuing notice to the company and it is mandatory in nature whereas the complaint was silent whether such reasons were recorded before issuing such notice to the petitioners. He further submitted that petitioners sent information and explanation to the respondent

on 05.05.2017 and 02.06.2017 and it satisfied requirements of the Section 206(7) and 206(3) of the Companies Act. He also relied upon the judgment in the case of State of NCT of Delhi Vs. Rajiv Khurana reported in (2010) 104 SCL 671 (SC) and in the case of Gorige Pentaiah Vs. State of Andhra Pradesh reported in (2008) 12 SCC 531. Further he submitted that the above judgments are squarely applicable to this case. To incorporate all the petitioners as accused, there should be specific averments in the complaint that the accused was in charge and was responsible for conduct of the business of the company. Therefore, he prayed for quashment of the entire proceedings in E.O.C.C.No.570 of 2017 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court I, Egmore, Chennai-8.

3. Per contra, Mr.B.Ramesh, Special Public Prosecutor for the first respondent submitted that the petitioners are accused and for them the defacto complainant issued notice under Section 206(1) of the Companies Act to the first accused company on 21.04.2017 seeking clarification in connection with the allegations against one, Rajkumar for misappropriation of funds of the company. But the complainant did not receive any reply from the accused company. Therefore, the respondent defacto complainant issued notice under Section 206(3) of the Companies Act. Even after receipt of the same, the company did not file any information within the stipulated period, and as such they are liable to be punished under Section 206(1) (3) r/w 206(7) of the Companies Act. Further submitted that there are specific averments as against the petitioners in the complaint and as such all are equally liable to be punished under the Companies Act and therefore prayed for dismissal of this quash petition.

4. Heard, Mr.S.Jeyaram, the learned counsel for the petitioners and Mr.B.Ramesh, Special Public Prosecutor for the first respondent.

5. The petitioners are A1 to A6. The first petitioner is the company and the petitioners 2 to 6 are directors of the company. It is seen from the entire complaint there is no specific averments and allegations as against the company as well as other directors. The allegations are also very vague and not clear whether the petitioners are responsible for non compliance as the directors of the company. Further it is also seen that there is no specific averments as that the officer who is in default to attract within the meaning of Section (2) (60) (vi) of the Companies Act, 2013. The complainant failed to state specific averments. As such, complaint cannot be sustained as against the petitioners.

6. It is relevant to extract the decision of the Hon'ble Supreme Court of India in the case of State of NCT of Delhi through Prosecuting Officer, Insecticides, Government of NCT, Delhi Vs. Rajiv Khurana reported in (2011) 2 MLJ (Cr1) 375 (SC), wherein it is held as follows:

"18. The ratio of all these cases is that the complainant is required to state in the complaint how a Director who is sought to be made an accused, was in charge of the business of the company or responsible for the conduct of company's business. Every Director need not be and is not in charge of the business of the company. If that is the position with regard to a Director, it is needless to emphasise that in the case of non-Director officers, there is all the more necessary to state what were his duties and responsibilities in the conduct of business of the company and how and in what manner he is responsible or liable.

19. In K.K. Ahuja's case (supra) the court summarized the position under section 141 of the Act as under:-

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix "Managing" to the word "Director" makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that

he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub- section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.

20. The court further observed that the trauma, harassment and hardship of the criminal proceedings in such cases may be more serious than the ultimate punishment, it is not proper to subject all and sundry to be impleaded as accused in a complaint against a company, even when the requirements of section 138 read with section 141 of the Act are not fulfilled.

21. The legal position which emerges from a series of judgments is clear and consistent that it is imperative to specifically aver in the complaint that the accused was in charge of and was responsible for the conduct of business of the company. Unless clear averments are specifically incorporated in the complaint, the respondent cannot be compelled to face the rigmarole of a criminal trial."

7. Though the dictum laid down under the Negotiable Instruments Act, the legal position is clear that there should be specific averments in the complaint that the accused was in charge and was responsible for the conduct of the business of the company. Therefore, the complaint cannot be sustained as against the petitioners. When there is no specific averments as to officer who is in default to satisfy the provision under Section 2 (60) (vi) of the Companies Act, 2013, no specific averments in the complaint. Therefore, the complaint is not at all sustainable as against the petitioners as such this Court is inclined to allow the prayer sought for by the petitioners.

8. Accordingly, the proceedings in E.O.C.C.No.570 of 2017 on the file of the Additional Chief Metropolitan Magistrate,

Economic Offences Court I, Egmore, Chennai-8 is quashed.
Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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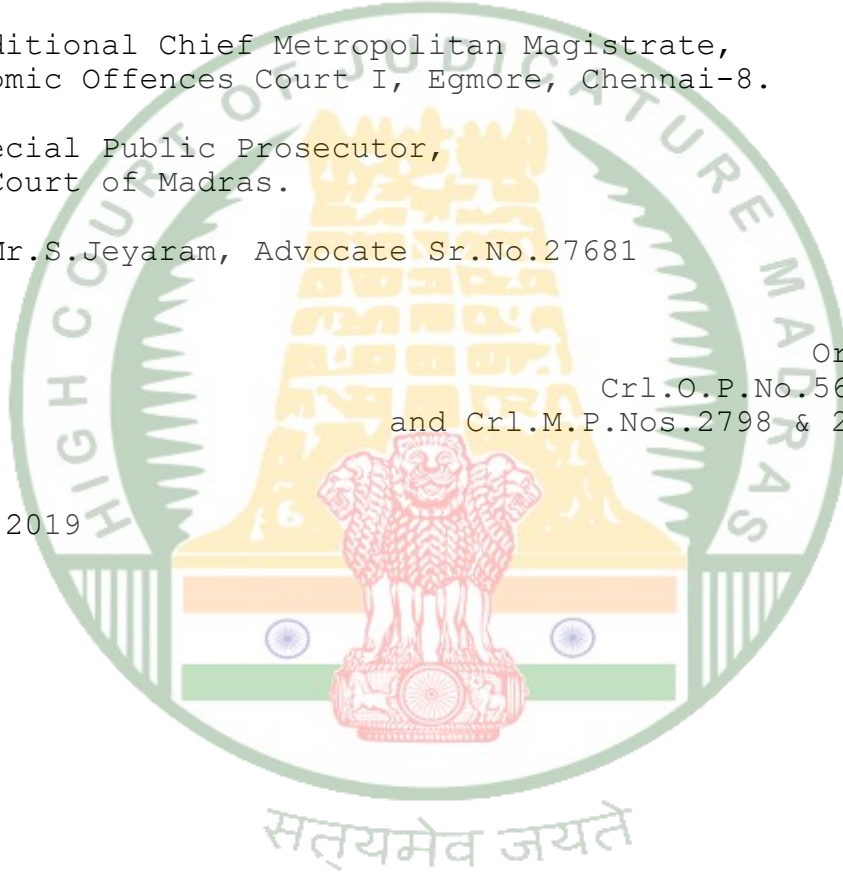
To

1. The Additional Chief Metropolitan Magistrate,
Economic Offences Court I, Egmore, Chennai-8.
2. The Special Public Prosecutor,
High Court of Madras.

+2 cc to Mr.S.Jeyaram, Advocate Sr.No.27681

Order made in
Crl.O.P.No.5652 of 2018
and Crl.M.P.Nos.2798 & 2799 of 2018

PA(CO)
CSL/22.03.2019



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