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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.989 of 2012

Securities and Exchange

Board of India,
D' Monte Building III Floor,
32 D' Monte Colony,
T.T.K. Road, Alwarpet,
Chennai-18, represented by its
Assistant General Manager,
S.Dhakshinamurthy.

.. Petitioner/Complainant

Vs.

1. Neerackal Mathew Joseph,
Director/Promoter,
Panchmala Estates
Plantations Pvt. Ltd.,
Neerackal House,
Muttuchira Post Office,
Kottiyam District,
Kerala.

2. George Cyriac,
Director/Promoter,
Panchmala Estates
Plantations Pvt. Ltd.,
1, Then Gummootil House,
Veliyemnor Post Office,
Kottiyam.

.. Respondents/Accused

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the judgment and order dated 13.04.2010 passed in
C.C.No.10510 of 2003 on the file of the XXIII Metropolitan
Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.C.Prasanna Venkatesh

For R1 : Mr.G.A.Thiyagarajan
R.Sankara Narayanan(Amicus Curiea)



O R D E R

This criminal revision is directed against the judgment and order dated 13.04.2010 passed in C.C.No.10510 of 2003 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. For the sake of convenience, the petitioner and the respondents will be referred to as complainant and accused, respectively.

3. The facts of the case in brief are as under:

3.1 The complainant initiated a prosecution in C.C.No.10510 of 2003 before the XXIII Metropolitan Magistrate, Saidapet, Chennai, against Panchmala Estates Plantations Pvt. Ltd., (A1) and its Directors (A2 to A5), alleging that they had failed to register themselves under the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999, which came into force in 1999.

3.2 Summons were served on AA 3 and 4, whereas, the complainant was not able to serve summons on AA 1, 2 and 5.

3.3 Under such circumstances, the trial Court passed the following order:

" Complainant Present. AA 3 and 4 absent. 317 Cr.P.C. petition filed and allowed. AA 1, 2 and 5 steps not taken. Sufficient opportunities were given from 2003. Hence, this complaint against AA 2 and 5 dismissed as steps not taken under Section 204 Cr.P.C. C/o. 25.06.2010.

25.06.2010: Complainant Absent. 256 Cr.P.C. petition filed and allowed. AA 3 and 4 absent. 317 petition filed and allowed. For appearance AA 3 and 4, C/o. 27.07.2010."

3.4 Challenging the aforesaid order, the complainant is before this Court under Section 397 r/w 401 Cr.P.C.

4. In this criminal revision, summons has been served on Neerackal Mathew Joseph (A2), who has entered appearance through Mr.G.A.Thiyagarajan. However, notice has not been served on George Cyriac (A5).



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5. The learned counsel for Neerackal Mathew Joseph (A2) submitted that his client was not a Director in Panchmala Estates Plantations Pvt. Ltd., (A1's) company, at the relevant point of time and he has resigned in the year 1995 itself.

6. This is a disputed question of fact, which cannot be gone into in this revision petition. Therefore, the dismissal of the complaint as against Neerackal Mathew Joseph (A2) is hereby set aside and he is directed to appear before the trial Court within two weeks from the date of receipt of a copy of this order and execute a bond for a sum of Rs.10,000/- with two sureties each, under Section 88 Cr.P.C. and it is open to him to raise all the defences available, before the trial Court.

7. As regards the complaint qua George Cyriac (A5), the complainant has not been able to serve notice till date and it is not known whether he (A5) is dead or alive.

8. Under such circumstances, the dismissal of the complaint qua George Cyriac (A5) by the trial Court stands confirmed and the dismissal of the complaint qua Neerackal Mathew Joseph (A2) is set aside.

In the result, this criminal revision is partly allowed in the aforesaid terms.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nsd
To

The XXIII Metropolitan Magistrate,
Saidapet,
Chennai - 600 015.

+1cc to Mr.G.A.Thiyagarajan, Advocate Sr.86026
+1cc to M/s.C.Prasanna Venkatesh, Advocate Sr.86616

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rr[co]
srg 09/12/2019