

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.994 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. Kanuganti Plantations Pvt. Ltd.,

5-3, 73/4, Vidyanagara

Colony Complex,

Kamareddy, Nizamad District,

Andhra Pradesh - 503 111.

2. Pushpa,

5-3, 73/4, Vidyanagara

Colony Complex,

Kamareddy, Nizamad District,

Andhra Pradesh - 503 111.

3. Niteshkumar,

5-3, 73/4, Vidyanagara

Colony Complex,

Kamareddy, Nizamad District,

Andhra Pradesh - 503 111.

... 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.6431 of 2004 on the file of the XXIII Metropolitan
Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.C.Prasanna Venkatesh

For Respondents: Mr.P.Ranganatha Reddy
Senior Counsel for
Mr.J.V.Mohan Kumar

O R D E R

This criminal revision is directed against the judgment and order dated 13.04.2010 passed in C.C.No.6431 of 2004 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.6431 of 2004 before the XXIII Metropolitan Magistrate, Saidapet, Chennai, against Kanuganti Plantations Pvt. Ltd., (A1) and its Directors (A2 and A3), 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 The complaint was taken on file by the learned Magistrate and no effective steps were taken by the complainant to even identify the accused and serve summons on them. The trial Court had also issued warrants for execution, but, to no avail.

3.3 After waiting for a period of six years, the trial Court dismissed the complaint on 13.04.2010, by passing the following order:

"Complainant present. Accused called absent. No steps. This case is pending from 2004 without any steps. Hence considering the pendency and steps not taken from 2004, this complaint is dismissed for steps not taken under Section 204 Cr.P.C."

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 have been served on the accused and they have entered appearance through Mr.J.V.Mohan Kumar, advocate

5. The learned counsel for the accused submitted that on 10.08.2010 itself, the company had filed an affidavit before the complainant with the following averments:

"4. That the above named company has refunded Rs.72,000/- to the 12 investors holding 72 teak units during the Fys. 2001-01 and 2001-02.

5. That the above named company has transferred the balance of 262 teak units of favor of the promoter director Mrs.K.Pushpa on being purchase of teak units from 262 members of the face value Rs.18,38,000/- during the Fys. 2005-06, 2006-07, 2007-08 and 2008-09.

6. That no teak units in the above named company are held by the public investors as on the date, as the balance of 1,838 teak units of face value Rs.18,38,000/- are held by the promoter director Mrs.K.Pushpa as on the date.

7. That the Members and Board of directors of the above named company has proposed to apply to the Registrar of Companies, Andhra Pradesh, Hyderabad for striking of name of the company form Register of Companies under Section 560 of the Companies Act under the Easy Exist Scheme 2010 announced by the Ministry of Company Affairs by filing the necessary documents, in its meeting held on 6th day of august, 2010. Hence, the undersigned promoter director of the company has been authorized to approached SEBI with a request to withdraw the legal action initiated against the company and the two directors and for issue of no objection certificate to make an application under Easy Exist Scheme 2010, to the Registrar of Companies, Andhra Pradesh, Hyderabad for striking of name of the company under Section 560 of the Companies Act, 1956.

8. That it was resolved in the Annual General Meeting of the Members held on 06.08.2010 to transfer the Borewell Value of Rs.89,532 under Fixed Assets-Plant & Machinery and the existing teak plantation value of Rs.18.35 lakhs in favour of the Promoter Director of the company Mr.K.Pushpa against Teak Unit Deposits of Rs.18.38 lakhs presently held by her."

6. In view of the aforesaid development, no useful purpose will be served in setting aside the order passed by the trial Court and remanding the matter for conducting trial afresh. Liberty is given to the complainant to examine the case of the accused afresh in the light of the aforesaid affidavit and if the cause of action still survives, they may compound the offence if law provides for that, or inter alia initiate a fresh prosecution before the appropriate Court.

In the result, this criminal revision is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

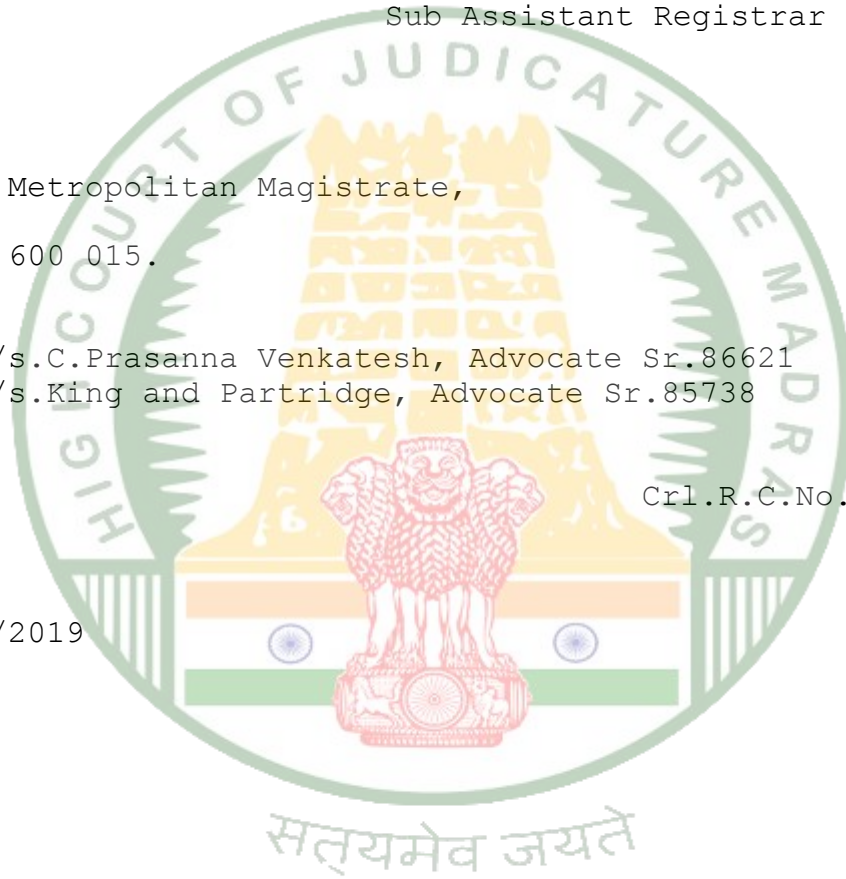
To

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

+1cc to M/s.C.Prasanna Venkatesh, Advocate Sr.86621
+1cc to M/s.King and Partridge, Advocate Sr.85738

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