IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Criminal Original Petition No.10908 of 2013
and
M.P.Nos.1 & 2 of 2013

1.M/s.Viswapriya Financial Services & Securities Ltd.,
Having its registered office at “Viswapriya”,
No.2, First Cross Road,
Kasturba Nagar,
Adayar,
Chennai 600 020.

2.R.Subramanian. ... Petitioners /A1 & A7

-vs-

Registrar of Companies,
Having his office at
Shastri Bhavan,
Haddows Road,
Chennai 600 006. ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to quash the charges dated 22.12.2011 framed against the petitioners by the Additional Chief Metropolitan Magistrate, (E.O.II), Egmore, Chennai in C.C.No.262 of 2007.

For Petitioners: R.Subramanian
Party-in-person.

For Respondent : Mr.D.Ramesh Kumar
Central Government Standing Counsel.

O R D E R

The respondent viz. The Registrar of Companies, filed a complaint against the petitioners and five others under Sections 58A(2)(b) and 58A(7)(b) of the Companies Act, 1956, (hereinafter called 'the Act') before the learned Additional Chief Metropolitan Magistrate, Economic Offence, Egmore, Chennai. The learned Magistrate took cognizance of the complaint in E.O.C.C.No.262 of 1997 and issued summons to the respondents/accused therein. The petitioners have been arrayed as A1 and A7 in the complaint. Challenging the summons issued by the learned Magistrate, the 1st petitioner- company has filed a petition before this Court under Section 482 Cr.P.C. in Crl.O.P.No.17646 of 1997. This Court after hearing both sides, dismissed the petition observing that the subject matter to be dealt with by the trial Court. Challenging the said order, the 1st petitioner-Company has filed Special Leave Petitions in Criminal Appeal Nos.900 and 901 of 2003, and the Hon'ble Supreme Court by an order dated 10.12.2009 has remitted the matter back to the trial Court. The trial Court after hearing, framed charges as against the petitioners. As against the same, the petitioners have filed the present petition invoking Section 482 Cr.P.C. raising the very same point that the petitioner's company is a non-finance company and no offence is made out under the Companies Act as the Petitioner's company is exempted under Section 58A. Therefore, the Registrar of Companies has no jurisdiction or authority to file a complaint against the 1st petitioner- Company. The learned Magistrate failed to consider the legal provisions and the submissions made by the petitioners and framed the charges. Therefore, the petitioners 1 and 7 have filed the present petition to quash the charge sheet and quash the charges levelled against him by the learned Additional Chief Metropolitan Magistrate, EO-II, Egmore, on 22.12.2011 in E.O.C.C.No.262 of 1997.

2. The learned counsel for the petitioners would submit that the 1st petitioner is a non-Banking Company and therefore the non-compliance of the provisions of Section 58A(6) of the Act is not made out and the 1st petitioner is exempted from provisions under Section 58A of the Act. The Reserve Bank of India Act was amended and Section 45-IA of the RBI Act came into force from 09.01.1997 requiring registration of every company conducting business as a non-Banking Finance Company conveying to compulsorily register with the Reserve Bank of India. As per the said amendment, the 1st petitioner-Company applied to the Reserve Bank of India and the 1st petitioner was granted registration as a Non-Deposit taking Non-Banking Finance Company under Certificate of Registration No.07.00213. Therefore, the advertisement published by the petitioner Company was in fact an advertisement for deposits, which was not even within the provisions of Section 58-A and which would not apply to the petitioner Company being a non-banking financial company as per Section 45-I(c) of the Act. Therefore, the Registrar of Companies has no authority to issue the summons. The learned Magistrate also failed to consider the legal provisions and framed the charges without considering the materials placed by the 1st petitioner company. He would further submit that even if

it was a deposit, only the provisions of Section 58A(2)(b) would apply and no other provisions would apply and has held it as though it was a admission that 58A(2)(b) would apply and he has therefore filed the compliant without application of mind to the fact that the basic defence of the petitioner was that the advertisement was not in respect of deposit and that as such the provisions of Section 58A was not attracted at all. Therefore, the charges framed against the petitioner is liable to be quashed.

3. The learned Government Advocate would submit that the petitioner soon after receiving the summons even in the year of 1997, filed a Original Petition for the very same relief i.e., before framing of the charge and before questioning of the complaint in Crl.O.P.No.17646 of 1997. This Court has elaborately discussed and also dismissed the petition. Aggrieved with the said order passed by this Court in the above said Original Petition, the 1st petitioner Company approached the Hon'ble Supreme Court, which by an order dated 10.12.2009 not accepted the contention of the petitioner. However, liberty was given to the petitioner to approach the trial Court and take all its defence. The trial Court was also directed to consider the application and passed the order. The learned Magistrate also considered all the facts and found the prima facie case and therefore framed charges. Now the petitioner is to face the trial and it is for the respondent to prove his contention. Under such circumstances, once this Court already decided very same issues between the parties, a second option is not maintained as res judicata. Therefore, the petitioner is to be dismissed.

4. Heard the learned counsel on either side and perused the records.

5. It is the contention of the petitioner that the 1st petitioner Company is exempted under Section 58A(7) of the Companies Act. The provisions of Section 58A(7) of the Act specifically makes all provisions of Section 58A of the Act except Section 58A(2) of the Act inapplicable to financial companies and as such no prosecution for offence punishable under Section 58A(6) of the Act will not at all lie on the finance company. Though, the offence under Section 58A(2)(b) of the Act read with Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977, was committed in respect of an advertisement released by the 1st petitioner company and the same was punishable under Section 58A(6) of the Act. The 1st petitioner Company being a non-Banking Finance Company, the provisions of Section 58A(6) of Companies Act did not at all attract to it in view of the specific exemption under Section 58(7) of the said Act.

Therefore, the Registrar of Companies has no authority to file a criminal complaint as against the 1st petitioner Company. The Hon'ble Supreme Court in the case of T.Velayudham Achari and another Vs. Union of India and others reported in [(1993) 2 SCC 582], has clearly directed the Magistrate to consider the jurisdictions of the Registrar of Companies. But, the learned Magistrate failed to consider the legal provisions and framed the charges. Therefore, it is against the directions of the Hon'ble Supreme Court and also against the Statutory provisions. Therefore, the charges framed against the petitioner Company are not maintainable.

6. The contention of the respondent is that the very same points were raised by the petitioners before this Court in Crl.O.P.No.17646 of 1997 and this Court disposed of the petition with a direction that all the contentions were left open to be raised in the trial Court. Now, again he has approached this Court. Therefore, the petition is liable to be dismissed.

7. On a careful perusal of the entire materials, it is noted that the 1st petitioner Company is a Public Limited Company registered under the Companies Act 1956. The Company was initially incorporated as M/s.Viswpriya Financial Services and Securities Pvt Ltd on 13.05.1991 and later converted to Public Limited Company on 03.09.1997. The 1st petitioner company was at that time managed by the second petitioner. The second petitioner was himself the Chairman and Managing Director and in default, the person responsible for the affairs of the 1st petitioner company. The 1st petitioner Company was a non-Banking Financial Company at the time of issuance of impugned advertisement and therefore, it would be liable for punishment under 58A(6)(a)(i) and the other petitioners, who are officers are liable under Section 58A(6)(b) of the Companies Act. The trial Court also after considering the entire materials has framed charges for the offence under Section 58A(6)(a)(i) as against the 1st petitioner Company and under Section 58A(6)(b) for the 2nd petitioner. Now, whether the Registrar of Companies can file the complaint for prosecuting the petitioners and whether the allegation against the petitioners falls under Section 58A(2)(b) and punishable under Section 58A(6), are the matters for trial, after recording the evidence. Though the learned counsel for the petitioner submitted that though the 1st petitioner Company is exempted under Section 58A of the Act and the next compliance of the mandatory provisions, Reserve Bank of India alone can file the complaint and not the Registrar of Companies. However, on reading of the order passed by this Court in Crl.O.P.No.17646 of 1997, this Court has elaborately discussed about the very same position. Though this Court dismissed the petition, the Hon'ble Supreme Court has not set aside the order passed by this Court and only given an

opportunity to the petitioner to raise all the defense.

8. Though the trial Court after taking into consideration framed the charge, the petitioner has not challenged that order but once again filed a petition invoking Section 482 Cr.P.C. This Court in Crl.O.P.No.17646 of 1997, on the very same issues had already decided that only the trial Court has to consider all the facts from the materials available and whether the petitioner will come under exemption under Section 58A and 58A (2)b and punishable under Section 58A(6) of the act, has to be decided after recording the evidence. Now, on the very same points, after much longer years has filed this petition invoking the very same provisions before the very same Court. In this regard, it is pertinent to extract the order passed in Crl.O.P.No.17646 of 1997, which reads as follows:

> "15.As pointed out by the counsel for the respondent, the question as to whether the first petitioner-company is exempted under Section 58A and the copy of the advertisement need not be delivered to the Registrar of Companies and the same shall be delivered to the RBI alone as it is a loan company, has to be decided only by the trial Court during the trial stage on the basis of the materials placed by the respective parties.
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> 16.In regard to the competency of the complainant, it shall be stated that Section 621 of the Companies Act clearly provides that the complaint can be filed either by the Registrar of Companies, or a shareholder of the company or any person authorised by the Central Government. So, the notification referred to by the counsel for the petitioners authorising some of the officers to launch prosecution would not disentitle the Registrar of Companies to file the complaint as he has been put in the first category among the competent officers to launch the prosecution"

Therefore, once this Court has already decided the issues, cannot reopen its own decision. As stated in the earlier order dated in Crl.O.P.No.17646 of 1997, whether the 1st petitioner Company is exempted under Section 58A is the matter to be decided by the trial Court after recording evidence.

9. Accordingly, this Criminal Original Petition is dismissed. Connected miscellaneous petitions are also closed.

10. Since the matter is pending from 2013, the trial Court is directed to complete the trial and dispose of the case in accordance with law within a period of four months from the date

of receipt of copy of this order. However, the petitioner is at liberty to take all his defense before the trial Court.

Sd/-

Assistant Registrar (MDU)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Chief Metropolitan Magistrate (E.O.II),
Egmore, Chennai.

2.The Registrar of Companies,
Shastri Bhavan,
Haddows Road,
Chennai 600 006.

+1cc to Mr.D.Ramesh Kumar, Advocate, S.R.No. 8707

Crl.O.P. No.10908 of 2013

KJ(CO)
GN(02/07/2020)