

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2020

PRONOUNCED ON : 21.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CRL.R.C.NOS.1002 TO 1004 OF 2013

- 1 Capt.V.N.Katiere
- 2 S.C.Batra
- 3 Capt.A.C.Batra
- 4 K.B.Srinivasan
- 5 B.Kalyanasundaram
- 6 Arvind K.Goel ... Petitioners in all revisions

vs.

The Registrar of Companies
No.46, North Mada Street
Nungambakkam, Opp. Police Station
Chennai 600 034 ... Respondent in all revisions

Prayer:-

Criminal Revisions filed under Sections 397 read with 401 Cr.P.C. seeking to set aside the orders dated 26.03.2013 in M.P. No.210 of 2003, M.P. No.215 of 2003 and 211 of 2003 in E.O.C.C. Nos.586 of 2002, 588 of 2002 and 587 of 2002 respectively.

For petitioners : Mr.N.P.Vijayakumar
in all revisions

For respondent : Mr.C.V.Ramachandramoorthy
in all revisions

COMMON ORDER

The Registrar of Companies launched three prosecutions in E.O.C.C.No.586 of 2002, 587 of 2002 and 588 of 2002 in the Court of the Additional Chief Metropolitan Magistrate, Egmore, Chennai 8, against 9 accused. After receipt of summons, the

accused filed petitions in the trial Court for discharging them from the prosecution which have been dismissed by the trial Court on 26.03.2013, aggrieved by which, A.2 to A.4 and A.6 to A.8 have preferred the present criminal revisions.

2 Heard Mr.N.P.Vijayakumar, learned counsel for the petitioners and Mr.C.V.Ramachandramoorthy, learned Standing Counsel for the respondent.

3 In order to appreciate the rival submissions, it may be necessary to state the minimum facts obtaining in this case.

4 Late-lamented Mr.S.Govind Swaminadhan, Senior Advocate and former Advocate General of this Court and 10 prominent citizens of Chennai promoted a company in the name and style of "Advanced Medical Care Limited" under the Companies Act, 1956 in 1992. The prospectus of the company dated 25.05.1992 disclosed the names of the promoters and invited applications from the public for share capital. The said prospectus contained a statement that the object of the issue was to "provide part of the finance required for setting up a 250 bedded hospital with specialities for trauma, critical care, cardiology, cardiothoracic surgery and perinatology and also for setting up a network of satellite hospital to extend the concept of preventive medical care and primary health care services to surrounding villages and also for meeting the expenses of the issue". After the public issue was over sometime in 1994, the shares of Advanced Medical Care Ltd. were purchased by the accused herein and the name "Advanced Medical Care Ltd." was changed to Sea Horse Hospitals Ltd. While that being so, the Registrar of Companies filed three prosecutions in E.O.C.C. Nos.586 to 588 of 2002 against the Directors of Sea Horse Hospitals Ltd. on the following allegations:

E.O.C.C. No.586 of 2002:

that the prospectus stated that the object of the company is to set up a 250 bed hospital with specialities for trauma, critical care, cardiology, cardiothoracic surgery and perinatology and also in setting up a network of satellite hospital to extend the concept of preventive medical care and primary health care services to surrounding villages and also for meeting the expenses of the issue, but, that was not implemented and therefore, the Directors are liable under Section 62 of the Companies Act.

E.O.C.C. No.587 of 2002:

that the prospectus stated that the object of the

company is to set up a 250 bed hospital with specialities for trauma, critical care, cardiology, cardiothoracic surgery and perinatology and also in setting up a network of satellite hospital to extend the concept of preventive medical care and primary health care services to surrounding villages and also for meeting the expenses of the issue, but, that was not implemented and therefore the Directors are liable under Section 68 of the Companies Act.

E.O.C.C. No.588 of 2002:

that the prospectus stated that the object of the company is to set up a 250 bed hospital with specialities for trauma, critical care, cardiology, cardiothoracic surgery and perinatology and also in setting up a network of satellite hospital to extend the concept of preventive medical care and primary health care services to surrounding villages and also for meeting the expenses of the issue, but, that was not implemented and therefore the Directors are liable under Section 63 of the Companies Act.

5 The Registrar of Companies has filed his counter affidavit.

6 According to the Registrar of Companies, a show cause notice dated 17.06.2002 was issued to Sea Horse Hospitals Ltd., but, they had not given any satisfactory reply and hence, the complaint.

7 The learned Standing Counsel for the Registrar of Companies submitted that the trial Court had rightly dismissed the discharge applications on the ground that in a summons case, when cognizance of an offence is taken and process issued, there is no power for the trial Court to discharge the accused and that the only remedy available to the accused is to file a petition under Section 482 Cr.P.C.

8 The learned counsel for the petitioners submitted that admittedly, the petitioners were not the promoters of Advanced Medical Care Ltd. and that they came into the picture only subsequently in 1994 when they purchased the shares of the company and changed the name of the company to Sea Horse Hospitals Ltd. and hence, they cannot be held criminally liable for the acts of those who had promoted the company and issued the prospectus.

9 This Court gave its anxious consideration to the rival submissions.

10 The fact that the petitioners were not the original promoters and they had come into the picture only subsequently is not only borne out by the prospectus but also by the following statement in the counter filed by the Registrar of Companies in the trial Court.

"3. This respondent/complainant submit that he came to know about this fraud and offence on 23.05.2002 and immediately issued show cause notices on 17.06.2002 and they failed to give any satisfactory reply. Subsequent to this notice, the present petitioners/accused purchased this company. The petitioners/accused themselves admitted that they purchased existing company with all liabilities and obligations of the previous company. Hence, the above petitioners/accused should have cleared/undertaken the above said liabilities and obligations, but they failed to do so. Hence, they are liable to be punished under Section 63,68,62 of the Companies Act, 1956." (emphasis supplied)

In the considered opinion of this Court, on this short point itself, all these prosecutions require to be quashed. The learned Standing Counsel for the Registrar of Companies submitted that when the accused had purchased Advanced Medical Care Hospitals, they had agreed to take over the liabilities and obligations of the said company and therefore, they cannot be absolved of the liability to adhere to their promise in the prospectus. This submission requires to be stated only to be rejected on the short ground that one can purchase only civil liability of another and not the criminal liability. In other words, a person can be punished for the offence committed by him and the offender cannot sub-lease the criminal liability to another however dear he may be. Crime and punishment is an action in personam and not an action in rem.

11 That apart, E.O.C.C. No.586 of 2002 deserves to be quashed on yet another ground, in that Section 62 of the Companies Act, 1956, is not a penal provision but only provides for civil liability for mis-statements in prospectus. Similarly, E.O.C.C. No.587 of 2002 also requires to be quashed on the short ground that Section 68, *ibid*, would apply only when, based on a reckless statement in the prospectus, the company had entered into an agreement with another person. In this case, there is no averment in the complaint that someone had complained to the Registrar of Companies that he had entered into an agreement with Advanced Medical Care Ltd. on the basis of the statements made by them in the prospectus. Likewise, E.O.C.C. No.588 of 2002 also deserves to be quashed on the ground that the prospectus did not contain any untrue statement

so as to attract Section 63 of the Companies Act. The sum and substance of the allegation of the Registrar of Companies is that the prospectus contained certain statements to the effect that a 250 bedded hospital is going to be started but that was not implemented. The complaint in E.O.C.C. No.588 of 2002 does not say what is the statement in the prospectus of Advanced Medical Care Hospitals Ltd. which is untrue.

12 Thus, looked at from any angle, the prosecution of the present accused for the alleged sins of their predecessors, in the opinion of this Court, is clearly an abuse of process of law.

In the result, in the exercise of powers under Sections 482 Cr.P.C., the prosecutions in E.O.C.C. Nos. 586 to 588 of 2002 are quashed and as a sequel, the present criminal revisions are allowed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Registrar of Companies
No.46, North Mada Street
Nungambakkam, Opp. Police Station
Chennai 600 034

+lcc to Mr.C.V.Ramachandramoorthy, Advocate, S.R.No.42320

Cr1.R.C.Nos.1002 to 1004 of 2013

SSV(CO)
CS/20/01/2021

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