IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.24108 of 2014

1.B.K.Pal
2.K.M.Venkateswaran ... Petitioners/Accused 3&4

Vs.

The Deputy Registrar of Companies,
Having office at
Shastri Bhavan, II Floor,
26, Haddows Road,
Chennai - 600 006. ... Respondent

Prayer:
Petition filed under Section 482 of Cr.P.C., seeking to quash the complaint in E.O.C.C.No.31 of 2004 on the file of the Additional Chief Metropolitan Magistrate Court, Economic Offences - I, Egmore, Chennai.

For Petitioners : Mr.Prakash P.Goklaney
For Respondent : Mr.D.Rameshkumar
CGSC

O R D E R

This criminal original petition has been filed seeking to quash the complaint in E.O.C.C.No.31 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate Court, Economic Offences - I, Egmore, Chennai.

2.The petitioners are the Directors of M/s.DSQ Software Limited and they are the accused in the complaint in E.O.C.C.No.31 of 2004. Challenging the said complaint, this petition has been filed.

3.The allegation in E.O.C.C.No.31 of 2004 is that M/s.DSQ Software Limited was inspected under Section 209 A of the Companies Act, 1956, by an Officer empowered by the Central Government in this behalf. During the course of inspection, the Inspecting Officer had noticed that the company had provided funds to some Companies for purchase of its own shares directly or indirectly. Though the Company has disclosed the fact in the Balance Sheet as at 31.12.2000 that funds were advanced to various parties and companies, it did not disclose the purpose for which the funds were provided and thus willfully omitted the material fact knowing it to be material. Hence, the provisions of Section 628 of the Companies Act, 1956 have been violated.

4.The learned counsel appearing for the petitioners would submit that the respondent had knowledge of the alleged irregularities under the Companies Act in the year 2000 itself, however, they filed the complaint only in the year 2004. He would further submit that it is clearly barred by Section 468 of Cr.P.C. and would further submit that no Court shall take cognizance of the offence after expiry of the limitation period. He would further submit that the complaint filed by the respondent is barred by limitation. Accordingly, he pray for allowing the criminal original petition.

5.The learned Central Government Standing Counsel appearing for the respondent would submit that the limitation aspect has been considered by the Delhi High Court in its decision dated 22.09.2010 made in Crl.MC.No.4007 of 2009 in the case of Ajay Jain Vs. Registrar of Companies NCT of Delhi & Haryana, wherein, it is held that the limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement.

6.The learned Central Government Standing Counsel appearing for the respondent would further submit that in the present case, once the complainant had knowledge of the offence, the complainant issued the show cause notice on 17.09.2003 and filed the complaint on 22.01.2004. Hence, the complaint has been filed well within the limitation period. Accordingly, he prayed for dismissal of the criminal original petition.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The relevant portion of the decision of the Delhi High Court, relied upon by the learned Central Government Standing Counsel appearing for the respondent, dated 22.09.2010 made in Crl.MC.No.4007 of 2009 in the case of Ajay Jain Vs. Registrar of Companies NCT of Delhi & Haryana, reads as follows:

> "5.As far as limitation aspect is concerned, limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement. The Registrar of Companies learnt about making of false statement after filing of balance sheet in the year 1999-2000, therefore, limitation would start only after the date of filing of balance sheet and not from the date of issuing prospectus and this plea, therefore, is not tenable. Whether the directors had resigned or not which is a question of fact which cannot be gone into by this Court and only the trial court, during trial can decide whether the directors had resigned or they continued to be the directors. If find no force in this petition. The petition is hereby dismissed with no orders to costs."

9.A perusal of the decision cited supra makes it clear that limitation of offences under Sections 63 and 628 of the Companies Act, 1956, starts from the date of knowledge of making a false statement.

10.Section 628 of the Companies Act, 1956, deals with penalty for false statements and it is useful to extract hereunder the said Section:

> "Penalty for false statements.
> 628.If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement -
> (a) which is false in any material particular, knowing it to be false; or
> (b) which omits any material fact, knowing it to be material; he shall, save as otherwise expressly provided in this Act, be

and hereby is confirmed and this Civil Miscellaneous Appeal is dismissed. punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.”

11.In the present case, no date was mentioned in the complaint as to when inspection under Section 209 A of the Companies Act, 1956, was conducted. Hence, it is presumed that the date on which the balance sheet has been filed is the date of knowledge of making the false statement. The balance sheet has been filed on 31.12.2000, hence, the respondent had knowledge of the alleged offence in the year 2000 itself, however, the respondent issued the show cause notice only on 17.09.2003 and filed the complaint on 22.01.2004.

12.The maximum punishment for the offence under Section 628 of the Companies Act, 1956, is imprisonment for two years and shall also be liable to fine. Hence, the complaint should have been filed within a period of three years from the date of knowledge of making false statement. In the present case, though the respondent had knowledge of the alleged irregularities under the Companies Act during the year 2000 itself, the respondent issued the show cause notice only on 17.09.2003 and filed the complaint on 22.01.2004, which is beyond the period of three years. Hence, the complaint is clearly barred by limitation.

13.In view of the above, I have no hesitation to allow this criminal original petition. This criminal original petition is accordingly allowed and the complaint in E.O.C.C.No.31 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate Court, Economic Offences - I, Egmore, Chennai, is hereby quashed in respect of these petitioners alone. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate Court,
   Economic Offences - I, Egmore, Chennai.

2. The Deputy Registrar of Companies,
   Shastri Bhavan, II Floor,
   26, Haddows Road,
   Chennai - 600 006.

+2cc to Mr.Prakash P.Goklaney, Advocate, S.R.No.15870
+1cc to Mr.D.Rameshkumar CGSC, Advocate, S.R.No.15301

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KJ(CO)
KKV/18/03/2020