

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No. 27008 of 2014

and

MP.No. 1 of 2014

1.V.Rajendran

2.R.Sathish Raj

3.R.Ganesh Raj

.... Petitioners/Accused

Vs.

Mr.K.Balasubramanian

....

Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.110 of 2013 now pending trial on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : M/s.Karthik Seshadri

For Respondent :.Mr.R.Subramani

for M/s.Prakash Gokulany

ORDER

The petitioners, who are accused have filed this Criminal Original Petition, seeking to call for the records in C.C.No.110 of 2013 now pending trial on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

2.The respondent/complainant is a share holder and Director of Citrex Products Limited, which is a public limited company incorporated under the Companies Act in the year 1992. The petitioners were inducted as the Directors in the Board of the said company and that the possession of the assets of the company were to be handed over to the petitioners. The original promoters of the company had borrowed certain sums of money and were unable to repay the same and thereafter, at the instance of the first petitioner, the assets and liabilities of the respondent/ complainant were transferred to the first petitioner. As per the arrangement, the petitioners became the Directors of the company and the names of the earlier persons

who were originally Directors ceased to be the Directors of the company.

3.The respondent / complainant is a shareholder of the company since 07.04.1999. The first petitioner was coerced to sign a Power of Attorney at the Registrar's Office at Adyar to set out the complainant as a shareholder of the said company.

4. The Accused persons were shareholders and Directors of the company till 2000. The first accused/ first petitioner ceased to be shareholders of the company and from April 2001 and the second and third petitioners ceased to be Directors of the company by retirement in 2000 and the first accused ceased to be a Director of the Company in 2001.

5. Further, the accused persons were also the Directors of the company M/s.Metafilms India Pvt. Ltd(MFIL) a Public limited company with its registered office at G.N.T. Road, Chinnambadu Post, Kavarapet 601 206 and further the said company M/s.Metafilms India Pvt. Ltd(MFIL) had committed default in filing the Annual returns and audited accounts for the last three years ending 31.03.2000. 31.03.2001 and 31.03.2002 and the default was in existence from 1.12.2002 onwards.

6. Sec. 274(1) (g) of the Companies Act, sets out that in respect of any public limited company that is in default of its obligation to file the Annual Return and Audited Accounts for a continuous period of 3 years, the Directors thereof, would inter alia be disqualified from being appointed on the Board of any other public limited company for a period of 5 years. In fact such default being attracted is admitted in the Audit Report of the said M/s.Metafilms India Pvt. Ltd(MFIL) for 2002-03 forming part of the Annual Report and accounts of the said company for the year 2002-2003 and signed by the Accused herein. It attracts the default provision of section 629 of the Act and by invoking the provision under Section 621 of the Companies Act, the private complaint was filed. Challenging the said private complaint, this petition has been filed by the petitioners.

7.The learned counsel appearing for the petitioners submits that the respondent/complainant claimed to be a Director and shareholder of the company namely M/s.Citrex Products Ltd., itself is false and for claiming such a right, already the respondent complainant instituted a suit in O.S.No.64/2004 on file of the Sub Court , Ponneri for declaration, declaring the respondent / complainant and other two persons as the directors of M/s.Citrex Products Ltd,. and they sought subsequent prayer, praying for interim injunction against the petitioners herein.

8. It is therefore the submission of the learned counsel for the petitioners that a suit having already been filed, the filing of the present complaint invoking the provisions of Section 621 of the Companies Act is impermissible. Further, the invocation of Section 621 of the Companies Act for filing the complaint is also unsustainable as the power to file the complaint is vested on the Registrar or a shareholder of the Company or any person authorised by the Central Government. The respondent/complainant, not being a shareholder, is barred from filing the present complaint, as the complaint is bereft of any particulars under which capacity the present complaint is being instituted by the respondent/complainant. It is submitted that the trial court has not taken the above aspect into consideration and, therefore, the complaint on file in C.C. No.110 of 2013 deserves to be quashed.

9. Per contra, learned counsel appearing for the respondent/complainant submitted that the petitioners, who are the Directors of the company, are liable to render accounts and file annual returns and non-submission of the same, complaint has been filed, which has been taken cognizance of by the trial court and the complaint has to be taken to its logical end by way of trial.

10. It is the further submission of the learned counsel for the respondent that the respondent, as a public spirited citizen, has a civil right to institute the complaint and the petitioners cannot seek to squirm out of their lawful duty by resorting to technicalities and the issues are triable issues, which can only be decided by the competent court and, therefore, prays for dismissal of this petition.

11. This Court paid its undivided attention to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

12. The pivotal contention in this case rests on Section 621 of the Companies Act, which prescribes the persons, who are granted authority by law to file a complaint for the alleged acts of the Directors and the same is extracted hereunder for better clarity :-

"OFFENCES AGAINST ACT TO BE COGNIZABLE ONLY ON COMPLAINT BY REGISTRAR, SHAREHOLDER OR GOVERNMENT.

(1) No Court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under

section 545), which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf : Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, where the a complainant under sub-section

(1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.

(2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 425 to 560) or in any other provision of this Act relating to the winding up of companies.

(3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1)."

13.A careful reading of the above provision clearly reveals that no court shall take cognizance of any offence against this Act (other than an offence with respect to which proceedings are instituted under section 545, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf. Except those three persons, who are authorised by law, no other person, be it a public spirited citizen or any person, who is concerned about the welfare of the company, could lay the complaint. Such being the case, when the relevant provision of the Companies Act bars complaint by any other person than those specified under the Act, taking cognizance of the complaint filed by a person, other than those specified u/s 621 is per se impermissible and the same cannot be allowed to continue. The status of the respondent as a shareholder/Director has to be adjudicated in the suit and at this point of time,

laying the complaint, which has been taken cognizance of, cannot be allowed to stand.

14. For the reasons aforesaid, this petition is liable to be allowed. Accordingly, this petition is allowed and the trial in C.C. No.110 of 2013 on the file of the Addl. Chief Metropolitan Magistrate, Egmore, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

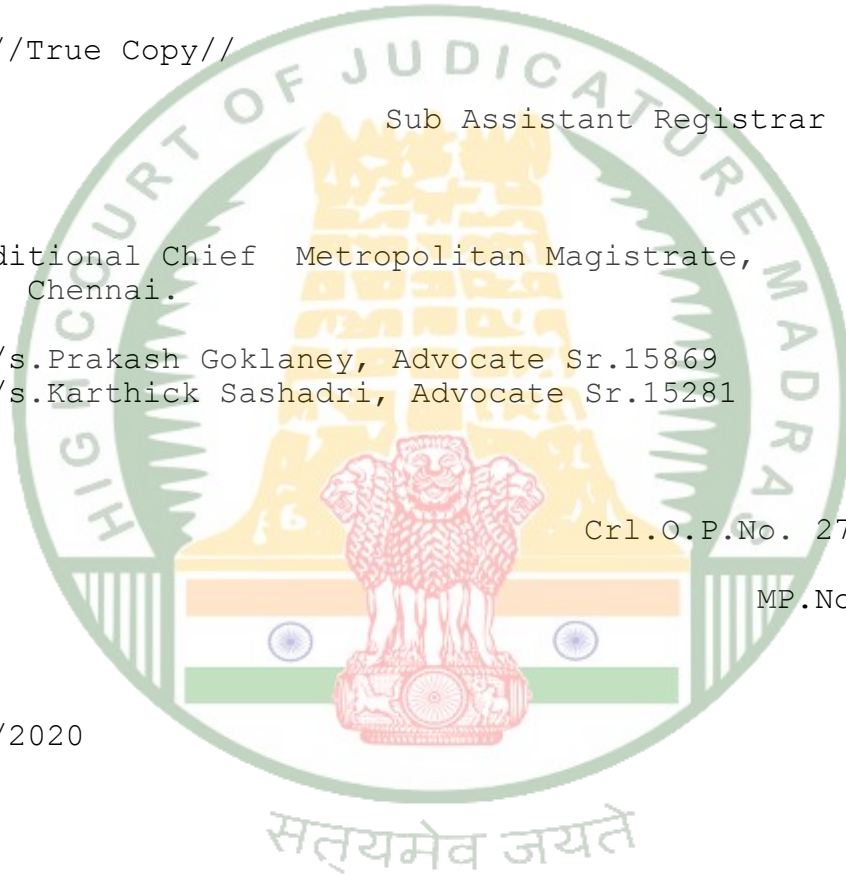
To

The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

+2cc to M/s.Prakash Goklaney, Advocate Sr.15869
+1cc to M/s.Karthick Sashadri, Advocate Sr.15281

Crl.O.P.No. 27008 of 2014
and
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