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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 768/2019 & CRL.M.A. 5633/2019

ADITYA SARDA

..... Petitioner

Through: Mr Sanjeev Sahay, Ms Sadapurna
Mukherjee and Mr Shakil Ahmed,
Advocates.

versus

REGISTRAR OF COMPANIES

..... Respondent

Through: Mr Gaurav Rohilla, Sr. Govt. Counsel
for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **20.01.2020**

1. The petitioner has filed the present petition, *inter alia*, impugning orders dated 10.12.2018, 19.12.2018 and 22.12.2018. The impugned orders dated 10.12.2018 and 22.12.2018 were passed in CC No.536132/2016 captioned '*Registrar of Companies v. Aditya Sarda*' and the order dated 19.12.2018 was passed in Criminal Revision No.821/2018 captioned '*Aditya Sarda v. Registrar of Companies*'.

2. The proceedings in CC No.536132/2016 were initiated by the Registrar of Companies (ROC) on an allegation that the petitioner had violated the provisions of Section 165(3) of the Companies Act, 2013 as he had acted as a Director in more than twenty companies. A plain reading of

the order dated 10.12.2018 indicates that the Trial Court had examined the matter and found that there was sufficient material on record to frame a notice against the petitioner. Accordingly, the learned ACMM had framed the notice. The petitioner pleaded not guilty and, therefore, the matter was put up for recording of the complainant's evidence on 14.02.2019. The learned ACMM rejected the Bail Bond furnished for the benefit of the petitioner as the same was furnished by the surety, who had also stood surety on the previous occasion but had failed to produce the petitioner on the given dates of hearing. The failure of the petitioner to appear before court had resulted in initiation of proceedings under Section 82/83 of the CrPC. Further, the Court had also issued non-bailable warrants against the petitioner, as the petitioner was not present in the Court on 10.12.2018.

3. Insofar as the decision of the learned ACMM to frame a notice is concerned, this Court finds no fault with the same. The allegation regarding violation of section 165 of the Companies Act, 2013 has been made by the ROC and the said authority would have to establish its case. It is the petitioner's case that the complaint had been filed without application of mind and the records available with the ROC indicate that the petitioner was not a Director of twenty companies, as alleged. The petitioner has founded this contention on several grounds. First, that the petitioner was an Additional Director in several companies and, therefore, had demitted office at the holding of the next Annual General Body Meeting. The petitioner contends that this is so because the petitioner had not been confirmed as a Director in those companies. Second, the petitioner states that two of the companies had since merged and, therefore, were required to be considered

as a single company. Third, it is submitted that the list relied upon by the ROC itself indicates that the petitioner had ceased to be a Director in several companies.

4. The learned counsel appearing for the petitioner states that if these factors are taken into account, it would establish that the petitioner was not a Director in more than twenty companies at the material time.

5. It is apparent from the above that the said contentions urged on behalf of the petitioner are required to be evaluated and examined by the concerned court. The question whether the petitioner had resigned from certain companies, and the said information is recorded in the records of the ROC, is a question of fact. The contention that the petitioner had ceased to be a Director would also require to be examined on the basis of the records, as available. Plainly, if the ROC is unable to establish its case, the complaint against the petitioner would be dismissed. It is not apposite for this court to examine the merits of the case in this petition.

6. The learned counsel appearing for the petitioner further submits that by virtue of the Companies (Amendment) Ordinance, 2019 being a Director in more than twenty companies is no longer an offence that involves any penalty. And, therefore, the criminal proceedings ought to be dropped. The petitioner relies on the judgment of the Supreme Court in ***T. Barai v. Henry Ah Hoe and Another: (1983) 1 SCC 177*** and ***Nemi Chand v. State of Rajasthan: (2018) 17 SCC 448*** in support of his contention.

7. The question whether the said decisions are applicable is also required to be considered by the Trial Court at the first instance.

8. In this view, this Court finds no reason to interfere with the complaint case filed by the ROC at this stage.

9. Non-bailable warrants have also been issued against the petitioner for the reasons that the petitioner had not appeared before the Trial Court. The learned counsel appearing for the petitioner states that the petitioner has since appeared before the Trial Court and, therefore, the NBWs have been cancelled. However, the petitioner had not been granted any exemption from appearance. In the circumstances, this Court considers it apposite to permit the petitioner to move an application seeking exemption from appearance before the Trial Court. In the event any such application is made, the Trial Court shall consider it sympathetically provided that the petitioner appears before the court. It is also open for the Trial Court to put the petitioner to any terms, as it considers necessary.

10. The petitioner has also challenged the order dated 22.12.2018, which indicates that processes under Section 82/83 of the CrPC had been issued against the petitioner. In view of the fact that the petitioner has already appeared before the Trial Court, there is no requirement for issuing any process under Section 82/83 CrPC at this stage. Any proceedings so initiated are hereby quashed.

11. In addition, the petitioner has also challenged the order dated 19.12.2018, whereby the learned Special Judge has rejected the petitioner's application for staying the proceedings before the Trial Court. In view of the above, interdicting the proceedings before the Trial Court is not warranted. Thus, this Court finds no reason to interfere with the order dated

19.12.2019.

12. The petition is disposed of with the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 20, 2020
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