



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.07.2021

CORAM

WEB COPY THE HONOURABLE MR. JUSTICE V.BHAVANI SUBBAROYAN

CrI.O.P No.1176 of 2016
and CrI MP No.525 of 2016

1. M/s.Jagadamba Benefit Fund Limited,
No.18, Chitrakulam West Street,
Mylapore, Chennai.

2. Nagabhushanam

3. Mamidi Ramachandran

Petitioner /Accused 1, 2 and 4

Vs.

The Deputy Registrar of Companies,
Tamil Nadu, Having office at Shastri Bhavan,
26, Haddows Road, Chennai 600 006.

Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.226 of 2015 pending on the file of Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai.

For Petitioner : Mr.Aswin Karthikeyan
for Mr.K.Ramasamy

For Respondents: Mr.D.Simon
Central Government
Standing Counsel

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in EOCC No.226 of 2015 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences- I), District Judge, Chennai.

2. The gist of the case is that the complainant /Deputy Registrar of Companies had filed a complaint against the petitioners under Section 92(4) r/w Section 92(5) of the Companies Act, 2013. The 1st petitioner is a company, which was incorporated under the Companies Act, 1956, on 10.03.1994 and the petitioners 2 to 4 are the Directors of the Company. The allegation made against the petitioners is that they have not



filed the Annual returns, financial statement as required under the Act and also violated the provisions of the said rules. A show cause notice was issued on 09.09.2014 by the complainant to the petitioner, who have acknowledged the receipt of the show cause notice. However, no reply has been sent to the complainant. That as per Section 92(5) of the Companies Act, 2013, if a company fails to file its annual return under Sub-section (4), before the expiry of the period specified under Section 403 with additional fees, the company shall be punishable with fine, which shall not be less than fifty thousand rupees but which may extend to five lakh rupees and every officer of the Company, who is in default shall be punishable with imprisonment for a term which may extent to six months or with fine which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees or with both. The said complaint was taken on file in E.O.C.C.No.226 of 2015 by the Additional Chief Metropolitan Magistrate (Economic Offences -I), District Judge, Chennai. Challenging the said proceedings, the petitioners filed this Criminal Original petition seeking to quash the same.

3. The learned counsel for the petitioner submitted that they had given a suitable reply to the show cause notice dated 18.09.2014. In spite of the reply, without considering the same and non-application of mind, the respondent complainant has given complaint against the petitioner. In the reply notice it has been stated that 2nd petitioner/accused had a server attack and was admitted to Hospital with Seizure Disorder for 12 days and his wife had cancer and therefore, requested to treat him as Ex-Director. The learned counsel for the petitioner further submitted that the present complaint given by the Complainant under the Provisions of Companies Act, 2013 which has come into force with effect from 1st April, 2014, for the alleged offences said to have committed for the period 2009 to 2013 is not permissible.

4. The learned counsel for the respondent/complainant submitted that if the company failed to comply with the statutory duties, the violation stands valid. Since, the said company is violating the relevant provision of companies Act, 1956 for the financial year 2009-2010 to till date, the offence involved is a continuing offence.

5. On going through the affidavit as 66well as the typed set of papers, it can be found that the 4th accused has given a reply to the show cause notice expressing his inability to comply with the statutory duties and to consider him as Ex-director and further, there is no proof has been produced this Court with regard to his resignation. It can be seen that on behalf of the Company and other directors are concerned, no reply has been given and even steps was also not been taken by them to file the Annal Returns, Financial Statement, Consolidated financial statements for the year 2009 to 2013. Taking into consideration the entire facts and



circumstances of this case, this Court is not inclined to quash the proceedings at this stage and the petitioners are at liberty to raise all grounds before the Court below and work out their remedy. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate
(Economic Offences- I), District Judge, Chennai
2. The Deputy Registrar of Companies,
Tamil Nadu, Having office at Shastri Bhavan,
26, Haddows Road, Chennai 600 006.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.D.Simon, Central Government Standing Counsel ,
Advocate SR.No. 36741

+1cc to Mr.Naveen Kumar Murthi, Advocate SR.No. 37023
Crl.O.P No.1176 of 2016
and Crl MP No.525 of 2016

SMI (CO)
A.SK(19.08.2021)