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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.12393 OF 2016

AND

CRL.M.P.NO.6391 OF 2016

Soumobroto Ganguly
16B, Minto Park Sydicate
13 D L Khan Road,
Kolkata - 700 027

...Petitioner / Accused No.2

Vs.

The Deputy Registrar of Companies,
Tamilnadu
Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006

...Respondents / Complainant

Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in E.O.C.C.No.299 of 2015 on the file of learned Additional Chief Metropolitan Magistrate E.O.-1, Allikulam Moore Market, Chennai and quash the same.

For Petitioner : Mr.C.Sakthimanikandan

For Respondent : Mr.K.Ramanamoorthy
Central Government -Standing Counsel

O R D E R

The present petition has been filed to call for the records in E.O.C.C.No.299 of 2015 on the file of learned Additional Chief Metropolitan Magistrate E.O.-1, Allikulam Moore Market, Chennai and quash the same.

2. The case of the petitioner is that he was appointed as Managing Director of the company M/s Eduxel Infotainment Limited [hereinafter referred to as 'Company'] as on 05.05.2011. The company was involved in the business of film distribution. The petitioner had put his expertise in the running of the company effectually and smoothly during his tenure. During October 2012, the petitioner submitted the letter to the Board of Directors informing his decision to step down as the Managing Director of the company due to his personal reasons. Thereafter, the petitioner addressed a letter dated 05.09.2013



to the Board of Directors of the company stating that he had resigned from the company as Director, Managing Director and all executions of the Company. The petitioner was in no way connected with the company or in the day today functioning of the company as on 05.09.2013. At present, the petitioner is working in Nigeria, he had twenty plus years of international experience in business development and marketing, finance and fund raising, organisation building and general management. The petitioner through one of the accused, viz., Director had came to know about the case in E.O.C.C No.299 of 2015 was filed before the learned Addl. Chief Metropolitan Magistrate, E.O.-I, Allikulam, Moore Market, Chennai on receipt of the complaint lodged by the respondent for non-appointment of Woman Director in the company and took up steps to follow the same.

3. It is the further case of the petitioner that the respondent had filed a complaint under Section 149 of the Companies Act, 2013 and as per the same, the company, should have appointed atleast one Woman Director as on 01.04.2015 and the respondent held that the petitioner is liable to be punished under Section 172 of the Companies Act, 2013. Further, the respondent had sent a show cause notice to the company on 27.07.2015, since no reply was received, the respondent filed the present complaint. The persons, who are in charge of the company at present, had not filed the requisite forms (Form No.32) before the respondent despite various requests and reminders to do so. Even the petitioner himself by letter dated 29.03.2014 and subsequent followup letter dated 22.08.2014 had informed the respondent about the willful neglect committed by the company by not filing the Form 32 for having his name deleted as Director of the company. Since the petitioner had resigned from the Directorship in the company with effect from 05.09.2013, he had no control over the affairs relating to the company thereafter. The respondent should have ascertained who are the present Directors of the Company in charge of the affairs of the company and issued the show cause notice to them and they have failed to do so. As no case is made out warranting any prosecution as against the petitioner, the learned Magistrate, had wrongly taken cognizance of the case, hence this petition to quash the same.

4. The learned counsel for the petitioner submits that the present complaint is filed under the provisions of the New Companies Act, 2013, wherein the said act came into force only in the year 2014 ie., 01.04.2014 and the petitioner by letter dated 05.09.2013 had addressed to the Board of Directors his resignation and he is no way connected to the company. Further, the respondent failed to make proper investigation about the present directors / officers of the company, who had actually failed to obey the show cause notice on behalf of the company issued by the respondent.



5. The learned counsel for the petitioner also submits that in the annual report for the year 2013-2014 filed by the company with the respondent, it is very clearly stated at Page No.8, that the petitioner had resigned from the Board and that the Board takes on record the contribution of the petitioner during the tenure. Further, the respondent had filed a complaint in C.C.No.299 of 2015 against two former Directors of the company including the petitioner and another case in C.C.No.252 of 2015 was filed by the respondent for not complying with the summons of the respondent, and the respondent had filed the case against five directors including this petitioner. Further, both the cases have been filed at the same time and it is not possible to comprehend the decision of the respondent to leave out other directors in the present complaint. This clearly shows that the respondent has mechanically prosecuted the complaints.

6. The learned counsel for the petitioner also submits that the petitioner has changed his previous residence address during January, 2013, hence the petitioner was not aware of the proceedings of the respondent at the initial stage. Further, the petitioner has also bonafidely written to the respondent expressing his willingness to co-operate with them. At present, the petitioner has also filed Form No.DIR-11 before the respondent, as per Section 168[1] of the Companies Act 2013 giving notice of resignation with effect from 05.09.2013.

7. Lastly, it is represented on behalf of the petitioner that in the absence of any prima facie case and in the absence of any overt act attributed against this petitioner, the continuation of criminal prosecution against the petitioner would cause irreparable loss and mental agony and the petitioner at present is residing at Kolkata along with his family and he has to proceed to Chennai for every hearing with much difficulty and also incurring heavy expenses, thereby pleaded to quash the proceedings in E.O.C.C.No.299 of 2015 before the learned Additional Chief Metropolitan Magistrate, E.O.-I, Allikulam Moore market, Chennai.

8. Per contra, a detailed counter affidavit has been filed by the Registrar of companies through the learned counsel for the respondent, wherein it is stated that the resignation of a Director shall take effect from the date of which the notice is received by the Company or the date; if any specified by the Director in the notice, whichever is later; provided that the Director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure, as he continues to be the Director of the Company as per records of the complainant's office. Hence it is for the Board to forward a copy of the Director's resignation along with detailed reasons for the resignation to the Registrar/ Respondent's



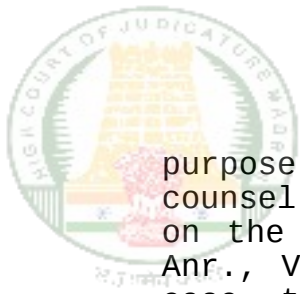
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office in such manner and the resignation of a Director shall take effect from the date on which the notice is received by the Company or the date; if any specified by the Director in the notice, whichever is later, further, the Director, who has resigned shall be liable even after his resignation for the offences which occurred during his tenure. Further, the petitioner has stated that he had shifted his residence as furnished in the petition, however, the petitioner has not communicated to the respondent about the shifting of his residence and summons were served to the petitioner based on the address available in the records of this office.

9. The learned standing counsel for the respondent vehemently submits that the resignation of a Director is taken on record in the office of the respondent only when the Board forwards the copy of the resignation letter within the time frame prescribed under the Act, stating clearly the grounds on which the Director has resigned. In case the office of the respondent accepts the fact of filing of Form DIR-11 by the petitioner, the DIR-12 has to be mandatorily filed by the company when a Director resigns. Thus, as per Section 170(2) of the Companies Act, 2013 a return containing such particulars and documents as may be prescribed of the Directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every Director and key managerial personnel as the case may be and within 30 days of any change taking place. Further, a return containing the particulars of appointment of Director or key managerial personnel and changes therein shall be filled with the Registrar in Form DIR-12 along with such fee as may be provided in the Companies (Registration offices and Fees) Rules, 2014 within thirty days of such appointment or change as the case may be.

10. The learned counsel for the respondent projects a plea that a prima facie case has been made out against the petitioner and the petitioner is an officer in default within the meaning of Section 2(60) of Companies Act, 2013, which clearly states that "officer who is in default" for the purpose of any provision in this Act, which enacts that an officer of the company, who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise. Moreover, the resignation is taken on record only by way of filing Form 32/DIR-12 with the respondent's office and as per the records maintained in the office, the petitioner continues to be the Director and officer in default, within the meaning of Section 2(60) of Companies Act, 2013.

11. Finally, the learned standing counsel appearing for the respondent contends that a prima facie case has been made out against the petitioner and the issue raised by the petitioner cannot be considered at the preliminary stage for the



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purpose of quashing the complaint. Also the learned standing counsel for respondent to substantiate his contention has relied on the Judgment of Hon'ble Supreme Court in A.V.Mohan Rao and Anr., Vs. Kishan Rao and Another on 16th July 2002, in the said case, the Hon'ble Apex Court has contended that the power under Section 482 CrI.P.C., could not be exercised to quash the complaint and to terminate the proceeding at the preliminary stage. In the present case, the complaint is pending trial and the petitioner has to prove the case by way of adducing evidence before the trial court and the petitioner cannot seek alternate remedy before the High Court for quashing the proceedings pending for trial.

12. Heard the learned counsel on either side and perused the documents placed on record.

13. The petitioner alleged that he has submitted his resignation on 20.10.2012 to the Board of Directors of the Company, Old Mahabalipuram, Chennai citing personal reason, thereafter, on 05.09.2013, the petitioner had attached the said resignation which was submitted on 20.10.2012 and sent the same to the Board of Directors, Nungambakkam, Chennai, which reads as follows:-

"I hereby tender my resignation as director, managing director, CEO and all executive positions of the company, effective immediately. I am also attaching my resignation letter as managing director of company dated Oct 20th 2012 which the board has failed to place despite several reminders and intimations.

Under appropriate rules I understand I am automatically disqualified as Director of the Company as I have failed to attend any of the past 3-4 board meetings of the company.

I thank the board and other stakeholders of the company for the support and courtesies extended to me during my tenure as director of the company.

I wish the company all success"

14. It is also seen that the petitioner has addressed a letter dated 29.03.2014 with regard to non filing of Form No.32 by the Board of Directors of the Company to the respondent stating that he has submitted resignation on 20.10.2012 and the attachment of the said letter on 05.09.2013, however, till date on an inspection of the MCA Website, the petitioner's name has not been removed from the list of Directors. The said letter proceeds to state that the same clearly amounts to a willful neglect on their part and amounts to misleading the public at large and an offence within the provisions of the Companies Act and requested to take appropriate steps to have the petitioner's name deleted as a Director of the Company and to take suitable action against the erring company and its Directors. On



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30.04.2014, a letter has been sent by the Asst.Registrar of Companies, Tamilnadu to the company stating that Form No.32 has not been filed for the resignation of the petitioner as Managing Director and thereby directed the company to offer comments within 10days from the receipt of the said letter. Again, on 22.08.2014, the petitioner has sent a follow-up letter to the respondent requesting to take appropriate steps to delete his name as a Director of a Company and to take suitable action against the erring company.

15. It is pertinent to point out that on 17.03.2015, the Regional Director (SR), Ministry of Corporate Affairs, Chennai has sent a letter to the company stating that an Inspection of the Books of Account and other records of the subject company in terms of Section 206(5) of the Companies Act, 2013 will be conducted and the company was directed to produce all the relevant materials for inspection. Thereafter, on 06.04.2015, a letter was addressed by the Regional Director (SR), Ministry of Corporate Affairs, Chennai to the company stating that they have not received the particulars, which were requested by them vide letter dated 17.03.2015 and further stated that non production of details & Accounts may result to issue of summons to all the Directors immediately without fail and after that prosecution proceedings will be initiated against the Company & Directors for default by Directors & company. On 09.04.2015, a letter was addressed by the company to the Assistant Director, Chennai stating that the previous letter dated 17.03.2015 was not received by them and that the person looking after accounting and corporate law was not well for last several weeks, as such, requested the concerned officer to grant three weeks of time to submit the required data.

16. On scrutinising the records, it could be seen that on 10.04.2015, the Assistant Director, Ministry of Corporate Affairs, Chennai has sent summons under Section 207(3)(b) of the Companies Act, 2013 to the petitioner intimating to submit all the details regarding books of account and other papers in connection with the company's business / assets during the period from 01.04.2010 to till date and in case of default, the petitioner was liable to be proceeded in terms of Section 207(4) of the Companies Act, 2013. On 08.07.2015, the Regional Director (SR), Ministry of Corporate Affairs, Chennai has sent a letter to the Registrar of Companies requesting to launch prosecution against all the officers and Directors of the Company for violation of Section 207(3)(b) of the Companies Act, 2013. Thereafter, on 08.08.2015, the company has addressed a letter to the Registrar of Companies stating that they have received the show cause notice dated 27.07.2015 and that Mr.P.K.Sarkar - Ex-Director used to take care of statutory compliances and that suddenly, he expired on 11.04.2015. Further, the company requested to issue the copy of the letter dated 17.3.2015 and to



withdraw the instant show cause notice and sought four weeks time to comply with the notice dated 17.03.2015.

17. On an examination of the entire materials placed on record it is seen that the Assistant Director, Government of India, Ministry of Corporate Affairs, Chennai had issued summons to the petitioner and others to attend the said office to give evidence and to produce the books of accounts or any other paper in pursuant to the notice dated 17.03.2015. However, the petitioner failed to comply with the same. Thereafter, the respondent, filed a complaint under Section 207(4) of the Companies Act, 2013 against the petitioner and others before the learned Additional Chief Metropolitan Magistrate, Chennai to summon and punish them according to law for the default. Thereafter, the respondent has also filed a complaint under Section 149 of the Companies Act against the petitioner and others stating that as per Sub-Section (1) of Section 149 of the Companies Act, 2013, every company shall have a board of Directors consisting of individuals as Directors and shall have (a) a minimum number of three directors in the case of a public company. Two directors in the case of a private company and one director in case of one person company (b) a maximum of fifteen directors, provided that a company may appoint more than 15 directors after passing a special resolution, further as per Sub-Section (2) of the above said section, every company existing on or before the date of commencement of the act shall within one year from such commencement shall comply with the requirement of Sub Section (1), that as per Rule 3 of the companies (Appointment and qualification of Directors) Rule, 2014, every unlisted public company having (a) paid up share capital of one hundred crore rupees or more or (b) turnover of three hundred crore rupees or more, shall appoint atleast one woman director within one year from the commencement of companies Act, 2013 (i.e.) 01.04.2014.

18. The said complaint further proceeds to state that as per the latest audited financial statements filed by the company, the paid up capital of the company is more than 100 crores and in view of the provisions of Sub Sections (1) and (2) of Section 149 of Companies Act, the company or the officers of the company should have appointed atleast one Woman director as on 01.04.2015, but from the E-records filed by the company it is seen that there is no woman director appointed in the company by the due date, thereby violated the said provisions.

19. Moreover, as per provisions of Section 172 of the Companies Act, 2013 "If a company contravene any of the provisions in this Chapter and for which no specific punishment is provided therein, the company and every officer of the company, who is in default shall be punishable with fine, which shall not be less than fifty thousand but may extend to five



lakh rupees. Further, a letter dated 06.04.2016 was addressed by the petitioner to the Registrar of Companies seeking apologize for the delay in response and stated that he was ceased to be a Director of the Company on 05.09.2013 and that he was not in touch with the said company. That apart, the petitioner had appeared before the Court of Additional Chief Metropolitan Magistrate, Egmore, three times, since Feb, 2016 and he had full intention to resolve the matters and only after his resignation, all causes have arisen. Further, the petitioner had stated that he is willing to co-operate at any time.

20. Further, an examination of the record would show that there is a receipt of G.A.R.7 from the Ministry of Corporate Affairs from one Tanmoy Dey, for a sum of Rs.7,800/- towards fee for Form DIR-11 and the same would show that the petitioner had resigned from the company on 05.09.2013 and the same was declared by the petitioner by signing the same digitally only on 05.03.2016, which is only after initiation of the present proceedings, however, Form No.DIR-12 is not found in the material produced and that Form 32 has not been filed by the company.

21. It is also brought to the knowledge of this Court by the learned counsel for the respondent that on earlier occasion, this Court had dismissed the petition, viz., CrI.O.P.No.12391 of 2016, on 12.07.2016, which was filed by Mehool Rasik Parekh, similarly placed person like that of the petitioner and the operative portion is extracted hereunder:-

"4. I am unable to countenance the submission, because the provisions under Section 168 of the Companies Act clearly state that a Director shall also forward a copy of his resignation along with the detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed, which the petitioner has not done. But, the petitioner has sent his resignation to the ROC only on 13.04.2015, after getting the notice dated 01.07.2015, which was issued by the ROC. The proviso under Section 168 of the Companies Act clearly states that even if a person has resigned from the Directorship, he will be liable for the offences committed during his tenure"

22. In the present case on hand, the petitioner, who had worked as Director in the company had submitted his resignation to the Company on 20.12.2012 and thereafter, the petitioner had submitted his resignation to the Board of Directors of the company on 05.09.2013 with a copy marked to the Regional Office of the Registrar of Companies, Chennai. The Registrar of



Companies had addressed a letter dated 30.04.2014 to the company stating that no Form 32 has been filed for the resignation of the petitioner and thereby granted 10 days time to offer comments and a copy was also marked to the petitioner, however, it appears that the company has failed to do so. Even assuming that the petitioner had submitted his resignation to the Registrar of Companies on 05.09.2013, however, the petitioner had filed FORM DIR-11 only belatedly after initiation of the present proceedings and Form DIR-12 has not been filed subsequently by the company.

23. Further, there are remedies available to the petitioner, whose e-form DIR-12 for resignation is not filed by the company (i) To file e-form DIR-11 with Registrar of Companies and send the correspondence to the company (ii) To file a complaint with Registrar of Companies in E-Form (iii) To send a legal notice to the company however, in the present case, only a letter and a follow-up letter has been sent by the petitioner, however DIR 11 alone has been filed by the petitioner that too belatedly.

24. In so far as offence under Section 149 of the Companies Act is concerned, the petitioner submits that the Companies Act, 2013 came into force with effect from 01.04.2014 and that the petitioner was resigned on 05.09.2013 and hence he is not liable, in contra, the respondent states that the proviso under Section 168 of the Companies Act clearly states that even if a person has resigned from the Directorship, he will be liable for the offences committed during his tenure.

25. In view of the above and considering the facts and circumstances of the present case, this Court is of the view that the grounds and the submissions raised by the petitioner are purely a matter of evidence and the same cannot be gone into by this Court in the quash petition. It is well settled legal position that only when the allegation made in the complaint do not constitute an offence, for which, the accused is subjected to trial, the complaint could be quashed.

26. In the instant case, the petitioner has not made out any case within the purview of Section 482 Cr.P.C., warranting to quash E.O.C.C.No.299 of 2015 pending on the file of learned Additional Chief Metropolitan Magistrate E.O.-I, Allikulam Moore Market, Chennai. However, the petitioner is at liberty to file a petition before the learned Additional Chief Metropolitan Magistrate E.O.-I, Allikulam Moore Market, Chennai for dispensing with his appearance and on filing such application, the learned Additional Chief Metropolitan Magistrate E.O.-I, Allikulam Moore Market, Chennai is directed to pass appropriate orders.



In result, the present Criminal Original petition is hereby dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

ssd

To

1.The Deputy Registrar of Companies,
Tamilnadu
Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006

2.The Additional Chief Metropolitan Magistrate E.O.-1,
Allikulam Moore Market,
Chennai

3.The Public Prosecutor,
High Court, Madras

+1cc to M/s.C.Sakthi Manikandan, Advocate SR.No.47486

+1cc to M/s.K.Ramanamoorthy, Advocate SR.No.47986

Cr1.O.P.No.12393 of 2016 and
Cr1.M.P.No.6391 of 2016

RR(CO)
RVM(06/10/2021)