IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.17835 of 2015
and
M.P. No. 1 of 2015

Shyam Malpani,
M/s.Malpani Associates,
Chartered Accountants
307 Chartered House,
297/299, Dr. Cawasji Hormasji Street,
Near Marine Lines Church,
Mumbai-400 002. ... Petitioner

Versus

The Registrar of Companies,
Tamil Nadu, Chennai,
having office at Shastri Bhavan,
26, Haddows Road,
Chennai-600 006. ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in E.O.C.C.No.7 of 2014 on the file of Addl. Chief Metropolitan Magistrate, Egmore and quash the same.

For Petitioner :Mr.Sunder Mohan

For Respondents :Mr.A.Kumaraguru,
Senior Standing Counsel

ORDER

To quash the criminal proceedings in E.O.C.C.No.7 of 2014, pending on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai, the present Criminal Original Petition has been filed.

2. The case of the petitioner is that he was a statutory auditor in respect of one M/s. Southern Wind Farms Ltd. The complaint has been filed for violation of Sec.227 read with Sec. 233 of the Companies Act, 1956, on the ground that, as the Auditor, he has the statutory duty to report that, in his opinion, the profit and loss account and the balance sheet comply with the accounting standard, but he failed to comply with the provisions of Sec.227 and 229 of Companies Act, thereby, he has committed the alleged offence. The learned Metropolitan Magistrate has taken the cognizance of offence and issued summons to the accused. Now, to quash the same, the present Criminal Original Petition has been filed.

3. Mr.Sunder Mohan, learned counsel appearing for petitioner would submit that, the petitioner was functioning as a statutory auditor, he has properly verified the balance sheet and submitted the report properly, he has not violated Sec. 227 or 229 of the Companies Act. He would further submit that at any rate, the complaint itself is barred by limitation. Admittedly, the accounting period is 2008-2009, thereafter, inspection was conducted immediately. Further, the Regional Director, Ministry of Corporate Affairs, Chennai said to have came to know about the alleged violation on 30.07.2013 and he has instructed the concerned officer to file a complaint. Even taking the above said date as date of knowledge of violation, the complaint ought to have been filed on or before 30.01.2014, however, the complaint was filed only on 05.02.2014 beyond the period of six months. Sec.233 of Companies Act prescribes maximum punishment only fine alone. In these circumstances, under Sec.468 of Crl.P.C., the complaint is barred by limitation. Hence, he prayed to quash the criminal case filed against the petitioner.

4. Mr. A. Kumaraguru, learned senior standing counsel appearing for respondent would submit that the petitioner, who is a statutory auditor, he has duty and responsibility to report the auditor's statement correctly, but he has illegally suppressed the materials, hence, the complaint has been filed. He would further submit that the Regional Director, Ministry of Corporate Affairs, Chennai instructed the authority to file a complaint on 30.07.2013, thereafter, due to administrative reasons, the complaint was filed only on 05.02.2014.

5. Heard submissions of both learned counsel appearing for petitioner as well as standing counsel appearing for respondent and perused the records.

6. The complaint has been filed against the petitioner for the alleged offence under Sec. 233 of Companies Act and the maximum punishment prescribed is only fine upto the extent of Rs.10,000/-. In that event, under Sec.468 of Crl.P.C., the maximum period of limitation for filing the complaint is six months. On perusal of complaint, the default accounting period was 2008-2009, and nothing stated in the complaint about the date of inspection. However, in para 4 of the complaint, it was clearly stated that the Regional Director, Ministry of Corporate Affairs, Chennai had instructed the concerned officer to file a complaint on 30.07.2013. Even assuming that the date of knowledge of the offence is 30.07.2013, the complaint ought to have been filed on or before 30.01.2014, but admittedly, the complaint was filed only on 05.02.2014 after expiry of limitation period. Therefore, the complaint itself is barred by limitation and the learned Metropolitan Magistrate ought not to have taken cognizance of the offence. Considering those circumstances, this Court is inclined to quash the criminal case filed against the petitioner/accused in E.O.C.C.No.7 of 2014 on the file of Addl. Metropolitan Magistrate, Egmore, Chennai. Accordingly, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1. The Registrar of Companies,
Tamil Nadu, Chennai,
having office at Shastri Bhavan,
26, Haddows Road,
Chennai-600 006.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Sundar Mohan, Advocate SR.No.64315

CRL.O.P.No.17835 of 2015

RGN(CO)
CB(20/12/2021)