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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.1917 OF 2018

AND

CRL.M.P.NO.730 OF 2018

Praveen Agarwal

.. Petitioner

Vs.

The Deputy Registrar of Companies, Tamilnadu,
Having office at Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the prosecution in EOCC No.467 / 2017 on the file of the Additional Chief Metropolitan Magistrate (EO.I), Allikulam Complex, Egmore, Chennai for offence under Section 165 r/w 165 (6) of the Companies Act, 2013.

For Petitioner : Mr.C.Arun Kumar

For Respondent : Mr.D.Ramesh Kumar

Central Government Standing Counsel

O R D E R

This petition has been filed to call for the records and quash the prosecution in EOCC No.467 / 2017 on the file of the Additional Chief Metropolitan Magistrate (EO.I), Allikulam Complex, Egmore, Chennai for offence under Section 165 r/w 165 (6) of the Companies Act, 2013.

2. The case of the prosecution is that the Deputy Registrar of Companies preferred a private complaint against the petitioner herein under Section 165 of the Companies Act, on the ground that the petitioner is holding Directorship in 24 companies, inspite of the provision that no person after commencement of the Act shall hold office as a director, including any alternate directorship in more than twenty companies at the same time under the Companies Act. Thereby, the



petitioner accused had violated the above said provision and holding directorship in 24 Private Limited / Public Limited Companies and thereafter on 23.06.2017, a Show cause notice was issued to the accused and there was no reply. Hence the respondent has filed the impugned complaint before the competent Court. Challenging the same, the present petition is filed.

3. The learned counsel appearing for the petitioner submitted that initially for the above said violation, the respondent has issued a show cause notice on 07.04.2017, for which, the petitioner has given a reply on 14.04.2017 and without considering the earlier reply given by the respondent, the respondent has again issued the second show cause notice dated 23.06.2017, for which also, the petitioner has sent a reply on 10.07.2017, stating about the earlier show cause notice received on 07.04.2017 and thereafter filing of a Compounding Application vide SRN No.G43477413, dated 12.05.2017. The respondent, without taking note of the factual aspects and the application for compounding the offences, in order to harass the petitioner, has issued the second show cause notice and hence prays for quashment of the impugned complaint.

4. The learned Central Government Standing Counsel appearing for the respondent submitted that pursuant to the earlier show cause notice, the petitioner has preferred the Compounding Application before the National Company Law Tribunal, Chennai, however the petitioner did not inform the outcome of the Compounding Application pending till date. Admittedly the petitioner is holding the post of Director in 24 Companies which clearly shows that the petitioner has violated the above said provisions of the Act and therefore, the complaint is perfectly in order and prays for dismissal of this petition.

5. The facts in the present case is not in dispute that the petitioner is implicated for the offence under Section 165 read with Section 165(6) of the Companies Act, 2013, on the ground that he is holding Directorship in 24 companies instead of 20 companies and violated the provisions of the Companies Act and due to which, the present impugned complaint came to be filed.

6. This Court is of the opinion that earlier one show cause notice was issued on 07.04.2017, for which the petitioner has sent a reply dated 14.04.2017. Thereafter the petitioner also filed a Compounding Application under Section 441 of the Act on 12.05.2017, for compounding of the offence under Section 165 of the Act. Without considering the Compounding Application, the respondent issued another show cause notice on 23.06.2017 and for which also, the petitioner had sent a reply on



10.07.2017, intimating the pendency of the Compounding Application, to the respondent.

7. In the above backdrop, this Court is of the considered view that without considering any of these aspects, filing of the impugned complaint by the respondent before the competent Court, is not sustainable. Hence this Court is inclined to quash the complaint against the petitioner.

8. For the reasons aforesaid, this Criminal Original Petition is allowed and the complaint in EOCC No.467 / 2017, on the file of the Additional Chief Metropolitan Magistrate (EO.I), Allikulam Complex, Egmore, Chennai for the offence under Section 165 r/w 165(6) of the Companies Act, 2013, is quashed. The respondent is directed to consider the Compounding Application dated 12.05.2017, in SRN No.G43477413, within a period of four weeks from the date of receipt of a copy of this order, and pass orders in accordance with law. Consequently connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Registrar of Companies, Tamilnadu,
Having office at Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006.
2. The Additional Chief Metropolitan Magistrate
(EO.I), Allikulam Complex, Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2ccs to M/S.C.Arunkumar, Advocate, SR.No.38365
+1cc to M/S.D.Ramesh Kumar, Advocate, SR.No.38921

Crl.O.P.No.1917 of 2018
and
Crl.M.P.No.730 of 2018

SSI (CO)
PM(06/09/2021)