



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.21438 of 2019
and Crl.M.P.Nos.11078 of 2019 and 12162, 12165 of 2021

Shri. Subramanian Ramaswamy

...Petitioner

Vs.

The Assistant Registrar of Companies,
Shastri Bhavan,
26, Haddows Road, Chennai - 600 006.
Chennai, Tamil Nadu.

...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records and quash the complaint in E.O.C.C.No.387 of 2018, on the file of the learned Additional Chief Metropolitan Magistrate Court (Economic Offences -I), Egmore, Chennai and quash the same.

For Petitioner : M/s..T.Sugirtha

For Respondent : Mr.K.Ramanamoorthy

ORDER

This Criminal Original Petition has been filed seeking to call for the records and quash the proceedings in E.O.C.C.No.387 of 2018, on the file of the learned Additional Chief Metropolitan Magistrate Court (Economic Offences -I), Egmore, Chennai, on the ground that the petitioner has been falsely implicated as accused for the alleged offence under Section 168 read with Section 172 of the Companies Act, 2013 on a complaint filed on 08.10.2018, which has been taken on file by the Additional Chief Metropolitan Magistrate Court, Economic Offences-I, Egmore, Chennai (EO-I Court) on 16.10.2018.

2. The fact reveals that the company, M/s Viswapriya (India) Ltd., in which the petitioner was a Director had not



filed Form DIR-12 in respect of the claimed resignation of three of its Directors viz., Shri R.Narayanan, Shri S.Rajaratnam and Shri T.S.Raghavan, such persons set out as having resigned in 2013.

WEB COPY

3. The learned counsel for the respondent/Registrar of Companies submit that the accused No.2 was the Director of the Company when the offence was committed as per the particulars filed in the office of the complainant and he is an 'officer in default' within the meaning of the Sec.2(60) of the Act 2013, for the reason that the complainant has received a complaint dated 12.12.20217 from Shri R.Narayanan, Shri S.Rajaratnam and Shri T.S.Raghavan against M/S/Viswapriya (India) Ltd for non-filing of DIR-12, which is in contravention of the provisions of Section 168 of the Companies Act 2013. In pursuance of the said complaint, he issued notice on 27.12.2017 under Section 206(7) of the Companies Act and sought explanation from the Company along with supporting documents. But the company did not send any reply to the said notice within the stipulated period and in view of the non-receipt of reply from the company, the complainant issued another notice dated 19.01.2016 under Section 206(3) of the Act to the company to furnish an explanation. For that also though notice was received, no reply was received from the accused and therefore, the said matter was reported to The Regional Director by the complainant, vide its letter dated 27.02.2018. In response to this The Regional Director launched prosecution under section 168 and 206(1) and 206(3) of Companies Act, 2013 for non-compliance.

4. Aggrieved by the same, the second petitioner/accused has filed this petition to quash the proceedings, on the ground that the Economic Offence Court-1 has mechanically taken cognizance of the complaint without any application of mind and without even the documents set-out in the complaints being appeared by the complainant, as there is nothing on record to make out even a prima facie evidence, The lower Court has also failed to note that the case in the complaint itself sets out that the alleged resignation of the three persons who are Directors of Viswapriya (India) Limited was in the year 2013 whereas the provisions of Section 168 and Section 172 of the Companies Act, 2013 came into force only on 01.04.2014 and as such no offence thereunder can at all arise in respect of offence claimed thereof in the year 2013 and the Court in the intrans case was not notified as a Special Court under Section 435 of Companies Act 2013 and as such it had no jurisdiction whatsoever to try any offence under Companies Act, 2013.



5. In reply, the learned counsel for the respondent submitted that the company, M/s.Viswapriya (India) Ltd., in which the petitioner is a Director, has not filed Form DIR-12 in respect of the claimed resignation of three of its Directors, namely, Shri R.Narayanan, Shri.S.Rajarathinam and Shri.T.S.Raghavan, such persons set-out as having resigned in 2013. But without giving those particulars, the said company has approached this forum. Further he submitted that the petitioner bound to prove those facts through examine of the witnesses. Hence, he prayed to dismiss the Criminal Original Petition.

6. A Section 168 of the Companies Act which reads as follows:-

''(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a (director may also forward) a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

2. 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:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

7. Considering submissions made on both sides, and based upon Section 168 of the Companies Act, if any one of the directors may resign from his office by giving a notice in writing to the company and the Board shall, on receipt of such notice, take note of the same and the company shall intimate the Registrar in such manner. It is an admitted fact that three of the directors had resigned from the Company in the year 2013 and the same was not reported.



8. The learned counsel for the petitioner submits that without any supporting documents and without any appreciation of the proper facts the trial Court has erroneously taken on file.

WEB COPY

9. As per the requirement, the petitioner failed to comply the conditions imposed under Section 168 r/w 172 of Companies Act, but the petitioner contended that trial Court erroneously has took cognizance of the offence which was not committed by him. All those fact shall be decided only after the examination of witnesses. The petitioner has not made out a prima facie case to quash the proceedings initiated by the Department nor any irregularity as committed by the trial Court. The petitioner has every right to produce the both oral and document evidence to prove his innocence before the trial Court.

10. Accordingly, this Criminal Original Petition is dismissed and the trial Court is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

msrm/ub
To

1. The Additional Chief Metropolitan Magistrate Court
(Economic Offences -I),
Egmore, Chennai.
2. The Assistant Registrar of Companies,
Shastri Bhavan,
26, Haddows Road, Chennai - 600 006.
Chennai, Tamil Nadu.

+1cc to M/s.K.Ramanamoorthy, Advocate Sr.68447

Cr1.O.P.No.21438 of 2019

pmk[co]
srg 18/03/2022