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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NOS.25292 OF 2017

AND

CRL.M.P.NOS.14551 &14552 OF 2017

Dilip Chandulal Parekh

...Petitioner / A2

Vs.

Registrar of Companies
Shastri Bhavan, II Floor,
No.26, Haddows Road,
Chennai-600 006.

...Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records and proceedings of impugned summon in EOCC.No.388 of 2017 on the file of Hon'ble Additional Chief Metropolitan Magistrate, EO-I, Egmore at Allikulam, Chennai and quash the same.

For Petitioner : Mr.M.K.S.Sundar

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records and proceedings of impugned summon in EOCC.No.388 of 2017 on the file of Hon'ble Additional Chief Metropolitan Magistrate, EO-I, Egmore at Allikulam, Chennai and quash the same.

2. Today when the matter is taken up for hearing, learned counsel for the petitioner fairly submitted that in similar case, petition filed under Section 482 of Cr.P.C. in Crl.O.P.No.11983 of 2016 vide order dated 05.08.2021, this Court had refused to quash the matter and granted liberty to the parties to raise all the legal plea before the trial court. It is relevant to extract Paragraph Nos.17 to 19 of the order dated 05.08.2021, which reads as follows:

17. It is alleged by the learned Counsel for the petitioner that the petitioner's term as "whole time



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director" of the said Company expired on 04.02.2011 and the petitioner was not paid salary since July 2010. However, it is seen from the records that the petitioner has sent a resignation letter only on 28.06.2012 addressed to the Chairman and other Directors of the said company by registered Post with A/D. Even assuming that the petitioner's term as a Director had ended on 04.02.2011, no jproof of the acceptance filed herewith by the Board. The petitioner has stated that salary for performing as director was not paid since July 2010 and if that is, it is surprising as to how the petitioner has been working as a director even without salary since July 2010, but had sent his resignation letter only on 28.06.2012. It is not known whether the petitioner was working without any salary since July 2010 till resignation of his post as Director of the Company. The facts are to be proved by him. These are totally contradictory versions from the averments of the petitioner. However, according to the respondent, as per MCA 21 portal, the signatory details (Annexure-A) of the subject Company includes the name of the petitioner as the whole time director till date. Under such circumstances, the factual aspects of the case would be disclosed only after a thorough trial to be held before the Additional Chief Metropolitan Magistrate (Economic Offences-I) District Judge, Chennai.

18. In view of the aforesaid contradiction found and discussions in the present petition as well as submissions of the learned Central Government Advocate that as per the explanation given under Section 269 of the Companies Act, 1956, a whole time Director can be seen as the Director who engages his/her whole time in the affairs of the Company. A whole time Director of one Company cannot accept or hold position of a whole time director in another company. The petitioner, being the only Whole Time Director of the company during the period of his resignation, cannot disregard his liabilities and responsibilities without getting consent by way of the acceptance from the Board of Directors regarding his resignation, hence, this Court is not inclined to quash the proceedings in E.O.C.C.No.5 of 2016 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences-I) District Judge, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. The Trial Court is directed to proceed further in this case having



heard pleas on either side and complete the proceedings within a period of nine months from the date of receipt of copy of this order.

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19. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

3. In such view of the matter, this Court is of the view that quashing of the case cannot be considered at this point of time. Accordingly, this Criminal Original Petition is dismissed with a direction to the Trial Court to dispose of the main case within a period of nine(9) months from the date of receipt of a copy of this order. It is for the petitioner to take all his defence before the trial Court. Consequently, connected Criminal Miscellaneous Petition is closed.

4. The learned counsel for the petitioner requested this Court to dispense with the presence of the petitioner. Taking into consideration, the facts and circumstances of the case, the presence of the petitioner before the Trial Court is dispensed with except for receipt of copies, answering the charges, questioning under Section 313 Cr.P.C., or on any other date as may be required by the trial Court. They shall be represented by a counsel, who shall cross examine the witnesses on the same day, when they are examined in Chief.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

msv/nr

To

1.The Additional Chief Metropolitan Magistrate,
EO-I, Egmore at Allikulam, Chennai.

2.The Registrar of Companies,
Shastri Bhavan, 2nd Floor,
No.26, Haddows Road,
Chennai - 6.

Cr1. O.P. Nos.25292 of 2017
and CRL.M.P.Nos.14551 &14552 of 2017

SRA(CO)
RVM(29/12/2021)