IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.O.P.Nos.22753 to 22760 of 2018
and
Crl.M.P.Nos.12659, 12657, 12661, 12663, 12665,
12667, 12669, and 12671 of 2018

Sivagnanam Pillai Bavanidass ...Petitioner/
Accused No.2 (In all Crl.OPs)

Versus

1. The Deputy Registrar of Companies,
   Tamil Nadu, Shastribhavan No.26,
   Haddows Road, Chennai 600 006. ...1st Respondent/
   1st Respondent in all Crl.OPs

2. M/s.Magnum Polymers India Ltd.,
   F-38, SIPCOT Industrial Complex,
   Gummidipoondi,
   Thiruvallur 601 201. ...2nd Respondent/
   Accused No.1 (In all Crl.OPs)

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned complaint made in E.O.C.C.No.241, 242, 243, 244, 245, 246, 247 and 248 / 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate, (Economic Offences) Egmore, Chennai 8, and quash the same insofar it relates to the petitioner.

For Petitioner in all petitions: Mr. N.Manoharan
for Mr.G.Magesh Kumar

For R1 in all petitions : Mr.R.Sidharth
Central Government
Standing Counsel

C O M M O N O R D E R

The petitioner has filed these petitions to call for the records pertaining to the impugned complaint made in E.O.C.C.No.241, 242, 243, 244, 245, 246, 247 and 248 / 2017, pending on the file of the learned Additional Chief Metropolitan

Magistrate, (Economic Offences) Egmore, Chennai 8, and quash the same insofar it relates to the petitioner.

2. The facts leading to the present round of litigation is that the petitioner is the Director of the second respondent Company, viz., M/s.Magnum Polymers India Ltd., who is arrayed as A-2 in the complaint. The respondent herein had filed a complaint on 26.05.2017 in

Complaint in	Filed Under Section	Offence
E.O.C.C.No.241/2017	Section 159 r/w Section 162 of the Companies Act, 1956	for not filing the annual return upto 30.11.2014 before the complainant;
E.O.C.C.No.242/2017	Section 220 r/w Section 220 (3) of the Act	for not filing of Balance Sheet and Profit and Loss Account in the prescribed form
E.O.C.C.No.243/2017	Section 166 read with Section 168 of the Act	For not conducting the Annual General Meeting in respect of Financial year ended 31.03.2014.
E.O.C.C.No.244/2017	Section 210 of the Act	for not filing of Balance Sheet and Profit and Loss Account for the financial year ending 30.03.2014
E.O.C.C.No.245/2017	Section 92(4) r/w Section 92(5) of the Act	For not filing the copy of annual returns for the year 2014-15 within 60 days from the date of AGM
E.O.C.C.No.246/2017	Section 96(1) r/w Section 99 of the Act	Failed to hold its Annual General Meeting on or before 30.09.2015.
E.O.C.C.No.247/2017	Section 129(2) r/w Section 129(7) of the Act	Failed to lay the financial statement in the AGM within the stipulated time on or before 30.09.2015.

Complaint in	Filed Under Section	Offence
E.O.C.C.No.248 /2017	Section 137(1) r/w Section 137(3) of the Act	Failed to lay a copy of financial statement, including consolidated financial statement if any duly adopted for the year 2014-15 before the complainant within 30 days of the date of AGM.

Against the said complaints, the petitioner has come before this Court seeking to quash the same.

3. The case of the petitioner is that before filing of the complaint by the respondent complainant, company petition was filed on 24.01.2017 for winding up of the company and also for appointment of Official Liquidator to take charge of the affairs of 2nd respondent Company and this Court had ordered winding up of the company and appointed Official Liquidator to take charge of the affairs of the Company. While being so, the allegations made against the petitioner, that too after winding up of the Company, is wholly unsustainable and, hence, prays for quashment of the same.

4. Learned counsel appearing for the petitioner reiterated the grounds as raised by the petitioner in the above petitions and submitted that the company having already directed to be wound up by appointing Official Liquidator, the stand of the respondent that there is infraction of the Act and the Rules is wholly misplaced and this petition deserves to be allowed. Further it is to be pointed out that though the alleged violations were committed in the year 2014, the said complaints were filed only in the year 2017, after a lapse of three years. Though there is no prescribed limitation available under the Companies Act, however, in order to take cognizance of the offence, procedure is laid down under Section 468 of Cr.P.C., wherein it is contemplated that for punishment not exceeding one year, complaint should have been filed within a period of one year. The offences alleged against the petitioner carry a maximum sentence of one year. However, all those complaints were filed beyond the period of three years. Hence it is clear violation of Section 468 (2) (b) of Cr.P.C. In support of the said contention, the learned counsel appearing for the petitioner has placed reliance on the decision reported in 2001 (2) L.W (Crl.) 656 (V.Karthikeeyan and another Vs. the Registrar of Companies, Shastri Bhavan, Haddows Road, Chennai) and yet another

case reported in 2007 (2) L.W. (Crl.) 606 (N.Kumar Vs. M.O.Roy, Assistant Director, Serious Fraud Investigation Office, Ministry of Company Affairs, Government of India). and submitted that in view of the settled position of law as held in the above cited decisions, the complaint itself is not sustainable and prays for quashment of the complaint.

5. The learned Standing Counsel appearing for the respondent submitted that if the complaint is filed beyond the prescribed limit, there is a provision available under Section 473 Cr.P.C. for condoning the delay. Further, the issue is a triable issue and the grounds raised by the counsel for the petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. Therefore, it is submitted that the petitioner may be permitted to raise all the grounds before the Court below and the same may be considered on its own merits and in accordance with law and prays for dismissal of these petitions.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. Facts in the present case is not in dispute. Amittedly there was violation of the provisions of the Companies Act for which, the Registrar of Companies launched criminal prosecution against the petitioner. It is the claim of the petitioner that though the allegation was of the year 2014, the complainant had filed complaint belatedly after a period of three years, i.e., on 26.05.2017.

8. Though it is claimed by the learned Central Government Standing Counsel that there is a provision for condoning the delay under Section 473 Cr.P.C, however, it is to be pointed out that the said Section prescribes that for condoning the delay, explanation ought to be made for the delay. Though the period of limitation can be extended in certain cases under Section 473 Cr.P.C., but for condoning the delay, acceptable reasons have to be furnished. However, a perusal of the materials available on record reveal that the respondent has not placed any material either before the Trial Court not before this Court, to show as to reason for the delay.

9. True it is that under the Companies Act, there is no bar for filing the complaint, however, the procedure contemplated for taking cognizance is prescribed under Section 468(2)(b) of Cr.P.C., wherein the period of limitation stands prescribed as one year, for offence punishable with imprisonment for a term not exceeding one year.

10. In this regard, reliance has been placed on the decision in 2001 (2) L.W (Crl.) 656 (V.Karthikeeyan and another Vs. the Registrar of Companies, Shastri Bhavan, Haddows Road, Chennai) and yet another case reported in 2007 (2) L.W. (Crl.) 606 (N.Kumar Vs. M.O.Roy, Assistant Director, Serious Fraud Investigation Office, Ministry of Company Affairs, Government of India) [supra]. For better appreciation, it is relevant to extract paragraph nos.25 to 30 of the decision reported in 2001 (2) L.W (Crl.) 656 (V.Karthikeyan) [supra]:

> ''25. As indicated earlier, the date of knowledge of the person aggrieved, the Registrar of Companies, is not 24-3-1998, but 30-6-1997, if it is so, the cognizance is to be taken within one year from the said date i.e., on or before 30-6-1998. Though the complaint was presented on 15-6-1998, the said date cannot be construed to be the date of cognizance.
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> 26. It is settled law that the cognizance is taken by the trial Court only when it applies its mind to the allegation in the complaint and issues process. In this case, the cognizance was taken on 10-9-1998, as seen in the order passed by the trial Court by which the case was taken on file and summons was issued to all the accused directing them to appear before the Court on 14-10-1998.
>
> 27. Section 468 would provide the caption 'bar to taking cognizance after lapse of the period of limitation'. Under this section, the Court shall not take cognizance of an offence after the expiry of the period of limitation. In the instant case, the period of limitation is one year from the date of knowledge of the person aggrieved. Admittedly, in this case, cognizance was taken only after the expiry of the period of limitation.
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> 28.It is true that the period of limitation can be extended in certain cases as provided in Section 473 of the Code. But, the condition for invoking Section 473 is that the Court must be satisfied that the delay has been properly explained or that it is necessary so to do in the interests of justice.
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> 29.In the present case, Section 473 has not been invoked. There is no application filed by the prosecution requesting for the extension of the period of limitation either by explaining the delay or to impress upon the Court that it is necessary that cognizance should be taken in the interests of justice.
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> 30. As noted above, cognizance was straightaway taken by the trial Court on 10-9-1998, under the misconception that the Registrar of Companies

> came to know of the offence only on 24-3-1998. As noted earlier, there cannot be any dispute that the Registrar of Companies came to know of the offence on 30-6-1997, on receipt of the complaint of the shareholder B.C.L. Narayana, dated 25-6-1997. Thus, it is clear that the trial Court which is not competent to take cognizance under Section 468 has wrongly taken cognizance on 10-9-1998.''

and paragraph nos.9.1, 9.2, 9.10 & 9.11 of the decision reported in 2007 (2) L.W. (Crl.) 606 (N.Kumar) [supra]

> ''9.1 There is no dispute that limitation for initiation of proceedings for offence under the Companies Act had not been prescribed under the Act itself and hence, the general law under the Code of Criminal Procedure will stand attracted.
>
> 9.2. Since the offence alleged under Section 207 of the Act is punishable with simple imprisonment for a term which may extend to 7 days and shall also be liable to fine, the period of limitation for taking cognizance of the offence will be one year. Under Section 468(2)(b) of Cr.P.C., the period of limitation for taking cognizance of the offence is one year if the offence is punishable with imprisonment for a term not exceeding one year.''

11. The aforesaid decisions clearly settle the above position of law and are squarely applicable to the case on hand.

12. In the present case, the allegation levelled against the petitioner is punishable only with fine and, therefore, the period of limitation for taking cognizance of the above said offences could not be over one year as even for offences punishable with imprisonment of one year, the limitation prescribed under Section 468(2)(b) Cr.P.C, is for a term not exceeding one year.

13. In the above facts and circumstances, this Court is of the considered view that the present complaints are barred by limitation. The complainant ought to have filed the complaints within a period of one year from the date of alleged offences, viz., 2014. Admittedly, in the present case, cognizance was taken only after the expiry of the limitation period.

14. Though other grounds have also been raised by the petitioner, however in view of the fact that the complaint itself is barred by limitation, as above, this Court is not going into any of the said grounds for the simple reason that the very complaint is barred by limitation, which is filed beyond the

period of one year as specified under Section 468(2)(b) Cr.P.C.

15. For the reasons aforesaid, these Criminal Original Petitions are allowed and the proceedings in E.O.C.C.Nos.241, 242, 243, 244, 245, 246, 247 and 248 / 2017, pending on the file of the learned Additional Chief Metropolitan Magistrate, (Economic Offences) Egmore, Chennai 8, are quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate,
   (Economic Offences)
   Egmore, Chennai.

2. The Chief Metropolitan Magistrate,
   (Economic Offences)
   Egmore, Chennai.

3. The Deputy Registrar of Companies,
   Tamilnadu, Shastribhavan No.26,
   Haddows Road,Chennai - 600 006.

+3cc to Mr.J.Elumalai, Advocate, S.R.No.50315

CRL.O.P.Nos.22753 to 22760 of 2018

GJ(CO)
RGA(22/11/2021)