IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2969 of 2019

Sri Saroj Kumar Poddar	....	***Petitioner***
versus-		
Registrar of Companies-cum-Official Liquidator, Odisha, Cuttack	....	***Opposite Party***

CORAM: JUSTICE S. PUJAHARI

Order No.	**ORDER 01.08.2022**
08.	**1.** This matter is taken up through hybrid mode.

2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 4th December, 2017 passed by the learned Additional Chief Judicial Magistrate (Special Court), Cuttack in Complaint No.2(c)C.C. No.182 of 2017, taking cognizance of offence under Section 165(6) of the Companies Act, 2013 and the proceeding against him. The allegation against the petitioner is that even though it is prohibited after 27.03.2015 to be a Director of Public Limited Company of more than 10 which was earlier 15, but the petitioner continues to be Director of 11 Public Limited Companies and thereby made violation of Section 165(1) of the Companies Act punishable under Section 165(6) of the Companies Act.

3. Heard Mr. Ashok Kumar Parija, learned Senior Counsel, presently the learned Advocate General of the State, appearing for the Petitioner. None appears on behalf of the Opposite Party in spite of sufficiency of notice.

4. It is submitted that no doubt, a person who after the cut-off date, remains as Director of more than 10 Public Limited companies, is liable to be prosecuted on the same, but the Petitioner has not incurred any such liability, inasmuch as though earlier he was the Director of 14 companies, but soon after notification, he elected to remain as Director of 10 companies only and left the rest 4 companies with intimation in that regard given to the Registrar of Companies, Odisha before the cut-off date mentioned. It is submitted that the complainant suddenly filed the case alleging that the Petitioner still continued to be the Director of more than 10 companies, such as, Director of 11 companies and stated to have issued notice to the Petitioner for show-cause before launching of the prosecution, which has not been received by the Petitioner.

5. Be that as it may, it is emphatically submitted that the Petitioner is continuing to be a Director of 10 companies. In spite of that on a wrong premise, the complaint was lodged for violation of the said provision. It is also submitted that the complaint also does not disclose as to which 11 companies the Petitioner continues to be a Director of, and simply it is stated that since the Petitioner continues to be a Director of 11 companies after cut-off date, that amounts to violation of the provision under Section 165(6) of the Companies Act, 2013. Pursuant to the complaint, no inquiry under Section 202 of Cr.P.C. was conducted, even though the Petitioner was staying outside jurisdiction though reflected in the order-sheet. Despite such deficiency, the trial court appears to have acted in a very mechanical manner by taking cognizance of the aforesaid offence and issuing process against the Petitioner. According to the petitioner, the impugned order having been passed in absence of materials disclosing the ingredients of the offence, is liable to be quashed. Reliance in this regard has been placed on a decision of the Apex Court in the case of ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others, reported in (1998) 5 SCC 749*** wherein the Apex Court in paragraph 28 have held as follows:-

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the

> Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused."

6. Reverting to the case at hand, from the materials on record, it appears to this Court that in the complaint, the complainant has not named 11 companies in which the Petitioner is alleged to be continuing as a Director, and simply it is averred that he continues to be a Director of 11 companies. An initial statement is not required to be recorded when the complaint is made in writing by a public servant acting or purporting to act in discharge of his official duty. When initial statement is not required to be recorded under Section 200 of Cr.P.C., for taking cognizance of an offence and proceeding against the accused, even if for issuance of process, it is mandated that no process shall be issued when accused resides in a place beyond the area over which the Magistrate exercises jurisdiction, without recording statement of witness/witnesses under Section 202 of Cr.P.C., I am of the view that the inquiry under Section 202 of

Cr.P.C. is not a pre-requisite for proceeding against the petitioner in such cases. However, the Magistrate stated to have recorded the statement of the petitioner which is seriously disputed by the counsel for the petitioner on the ground that the same is contrary to the materials on record. Be that as it may, without entering into the controversy as to whether 202 Cr.P.C. statement is required for issuing process against the petitioner/accused as he was residing outsider the jurisdiction of the Court, since the complaint itself does not disclose the fact that the petitioner in which of the 11 companies is continuing to be the Director in detail, but only the general statement has been made that he continues to be a Director in 11 companies after the cut-off date violating the provisions of Section 165(6) of the Companies Act, 2013, this Court is of the view that no prima-facie case is made out against the petitioner in the complaint. In such premises, the trial Court could not have decided to proceed against the petitioner in view of the decision of the Apex Court in the case of ***Pepsi Foods Ltd.*** (supra) and, as such, the impugned order of cognizance as well as the criminal prosecution against the petitioner is liable to be quashed.

7. I would, therefore, allow this Criminal Misc. Case and quash the impugned order of cognizance as well as the criminal prosecution launched qua the Petitioner vide Complaint No.2(c)C.C. No.182 of 2017 on the file of the learned Additional Chief Judicial Magistrate (Special Court), Cuttack. The court concerned shall do well to comply with this order on production of the certified copy of this order.

8. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge

DA/MRS