



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.Nos.11849 & 11850 of 2015
and

M.P.Nos.1, 1, 2 & 2 of 2015

Rajesh K. Hiranandani ... Petitioner in both Crl.O.Ps

Vs

The Deputy Registrar of Companies,
Tamil Nadu,
Having office at Shastri Bhavan,
26, Haddows Road,
Chennai 600 006 .

... Respondent in both Crl.O.Ps

Both the Criminal Original Petitions are filed under Section 482 of Cr.P.C. to call for the records culminating in E.O.C.C.No.42 & 43 of 2015 respectively pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences -II, Egmore, Chennai- 8 and quash the same.

For petitioner ... Mr. Sriram Panchu,
in both O.Ps Senior Counsel
for Mr. Arun Anbumani

For respondent ... Dr.D.Simon
in both O.Ps CGSC

C O M M O N O R D E R

Both the Criminal Original Petitions have been filed to quash the proceedings in EOCC Nos.42 & 43 of 2015 respectively pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai - 8 as against the petitioner.

2. Since the issues involved in both the cases are one and the same, both the cases are heard together and disposed of by this common order.



3. The respondent/ Deputy Registrar of Companies has filed complaints against the petitioner, who is a Chartered Accountant for violating the provisions of Section 628 of the Companies Act, 1956.

WEB COPY

4. The allegation in the complaints is that the petitioner, being an Auditor of one M/s.Financial Technologies(India) Limited, should state in thick type or in italics, regarding the observations or comments of the auditors which have any adverse effect on the functioning of the company in terms of compliance of the requirement of the provisions of Section 227(3)(e) of the Companies Act. But, the report filed by the petitioner for the period 31.03.2011 and 31.03.2012, and is not an usual practice to incorporate that type of language in their report and the petitioner has knowingly added the word "without qualifying our opinion" and it has been done with a view to avoid the relevant observations being regarded as qualifications, which is a false statement. thereby, he has violated the provisions of Section 628 of the Companies Act. The learned Judicial Magistrate has taken cognizance of the offences in both the cases and issued process. To quash the same, both the Criminal Original Petitions have been filed.

5. The respondent filed a counter affidavit, wherein, in paragraph 8, they have specifically admitted the words used by the auditor that "without qualifying our opinion" in the financial statement, which is only in accordance with Paragraphs 32 and 35 of SA 700 (AAS 28). The relevant portion of the counter reads as follows:-

"8. It is humbly submitted that the usage of words "without qualifying out opinion" in the financial statement is in accordance with the paragraph 32 and 35 of SA 700 (AAS 28)- The Auditor's report on financial statements. "

6. I have heard both sides and carefully perused the materials available on record.

7. In view of the counter filed by the respondent, more particularly, in paragraph 8, admitting that the words used by the petitioner, are only in accordance with Paragraphs 32 and 35 of SA 700 (AAS 28) of the Companies Act, 1956, there is no violation of any provisions of the said Act, as alleged in the complaints. In the said circumstances, this Court is of the considered view that the present complaints are not maintainable and hence, the same are liable to be quashed.



8. Accordingly, both the Criminal Original Petitions are allowed and the complaints against the petitioner in E.O.C.C.Nos.42 & 43 of 2015 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai, are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

mrp

To

1. The Additional Chief Metropolitan Magistrate,
Economic Offences-II, Egmore, Chennai,

2. The Deputy Registrar of Companies,
Tamil Nadu,
Having office at Shastri Bhavan,
26, Haddows Road,
Chennai 600 006 .

+2ccs to Mr.Dr.D.Simon, Advocate SR.No.4812 & 4810

+1cc to Mr.Arun Anbumani, Advocate SR.No.4489

Cr1.O.P.Nos.11849 & 11850 of 2015

AK II(CO)
GMY(23/03/2022)