IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20..12..2021

Orders Pronounced on : 11..01..2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Original Petition Nos.2836, 2837 and 5468 to 5471 of 2015
and
M.P.Nos.1 of 2015

1.M.s.Teledata Technology Solutions Limited (A1)
Teledata Tower, First Floor,
37/1, Velachery Tambaram Main Road,
Velachery, Chennai.

2.Sakthivel Natarajapillai (A2)
3.Balasubramanian Krishnamurthy (A3)
4.Jagadish Girish

... Petitioners in all Crl.O.Ps.

-Versus-

The Deputy Registrar of Companies,
Tami Nadu,
Having Office at Shastri Bhavan,
26, Haddows Road,
Chennai 600006.

... Respondent in all Crl.O.Ps.

Prayer in Crl.O.P.No.2836 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.1 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.1 of 2014 as against the petitioners.

Prayer in Crl.O.P.No.2837 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.2 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.2 of 2014 as against the petitioners.

Prayer in Crl.O.P.No.5468 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.4 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.4 of 2014 as against the petitioners.

Prayer in Crl.O.P.No.5469 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.3 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.3 of 2014 as against the petitioners.

Prayer in Crl.O.P.No.5470 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.5 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.5 of 2014 as against the petitioners.

Prayer in Crl.O.P.No.5471 of 2015:- Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the case in E.O.C.C.No.6 of 2014 pending on the file of the Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai and quash the entire criminal proceedings in E.O.C.C.No.6 of 2014 as against the petitioners.

For Petitioner(s)	:	Mr.V.K.Sathiamurthy for Mr.C.Rajan for petitioners in all Criminal Original Petitions
For Respondent(s)	:	Mr.A.Kumaraguru, SPC for respondent in all Criminal Original Petitions

COMMON ORDER

Crl.O.P.Nos.2836, 5469 and 5471 of 2015 have been filed seeking to quash the criminal prosecutions initiated in E.O.C.C.Nos.1, 3 & 6 of 2014 for the offence under Section 159 r/w 162 of the Companies Act, 1956 (hereinafter will be called as “the Act”) pursuant to the complaint filed by the respondent against the petitioners for having contravened the provisions of Sections 159 of the Act in not filing the company's annual returns upto 30.09.2010, 30.09.2011 and 30.09.2012 respectively within 60 days from the date of the Annual General Meeting (AGM), while Crl.O.P.Nos.2837, 5468 and 5470 of 2015 have been filed seeking to quash criminal prosecutions initiated in E.O.C.C.Nos.2, 4 & 5 of 2014 for the offence under Section 220 r/w 220(3) of the Companies Act, 1956 pursuant to the complaint filed by the respondent against the petitioners for having contravened the provisions of Section 220 of the Companies Act, 1956, in not having filed the balance-sheet and the profit and loss account for the financial year ending 31.03.2010, 31.03.2011, 31.03.2012 respectively within sixty days of the close of the financial year.

2. Since the parties in all these original petitions are one and the same and the issues involved are identical, all the original petitions were heard together and being disposed of by way of this common order.

3. The facts leading to the filing of the present original petitions, in brief, are as follows:-

(a) Crl.O.P.Nos.2837, 5468 and 5470 of 2015:- The respondent – Deputy Registrar of Companies, Tamil Nadu, has filed three separate complaints under Section 220 r/w 220(3) of The Companies Act (in short, "the Act') alleging that balance sheet and profit and loss account of the accused company for the financial year ending 31.03.2010, 31.03.2011 and 31.03.2012 were required to be placed in the annual general meeting of the company within sixty days of the close of the financial years and further required to be filed with the respondent office within 30 days of holding the annual general meeting. However, the accused company have not filed the same with the complainant/respondent officer as required under the Act. Thus, the accused company and the petitioners 2 to 4, who were the Directors of the accused company, are liable to be punished under Section 220 (3) of the Act for the failure to comply with the statutory provisions of Section 220 of the Act.

(b) Crl.O.P.Nos.2836, 5469 and 5471 of 2015:- The respondent – Deputy Registrar of Companies, Tamil Nadu, has filed three separate complaints under Section 159 r/w 162 of the Act alleging that annual returns of the company made upto 30.09.2010, 30.09.2011 and 30.09.2012 respectively were required to be filed with the respondent within sixty days from the date of annual general meeting in terms of Section 159 of the Act. However, the petitioners have not filed annual returns within the statutory period and thereby committed an offence punishable under Section 162 of the Act.

(c) According to the respondent, the offence under Sections 159 and 220 of the Act, which are punishable under

Section 162 of the Act, are continuing offences and the default commenced on 01.11.2010, 01.11.2011 and 01.11.2012 respectively in respect of offence alleged in Crl.O.P.Nos.2837, 5468 and 5470 of 2015 and the default commenced on 01.12.2010, 01.12.2011 and 01.12.2012 respectively in respect of offence alleged in Crl.O.P.Nos.2836, 5469 and 5471 of 2015 and till filing of the complaints, the accused did not comply with the statutory requirements. As the offencs are continuing offences within the meaning of Section 472 of Cr.P.C. question of limitation in filing the complaints does not arise.

(d) The respondent filed six separate complaints before the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, as already stated supra, which were taken cognizance and process were issued against the petitioners. Seeking to quash those complaints, the petitioners have come up with these original petitions.

4. Mr.Sathiyamurthy, the learned counsel appearing for the petitioners/accused would submit that the offence falling under Section 159 of the Act, which is punishable under under Section 162 of the Act and the offence falling under Section 220 (1) and (2) of the, which are punishable under Section 220 (3) of the Act concerning non filing of annual return and non placing of balance sheet and profit and loss account of the company are one time offences and they are not continuing offences. The learned counsel appearing for the petitioners would submit that the maximum punishment prescribed for the offence under Section 162 of the Act is payment of fine alone and therefore, as per Section 468 of Cr.P.C. the complaints ought to have been filed within a period of six months from the date of commission of alleged offence. In absence of any express provisions in the Act that the offenses under section 162 of the Act is a continuing offense, it cannot be treated as continuing offence where limitation could be waived under Section 472 of Cr.P.C. Paying penalty for every day till default is complied with will not make an offence as continuing one and therefore, the complaints are barred by limitation and the same are liable to be quashed.

5. The learned counsel appearing for the petitioners would further submit that even though in the complaints, it has been stated that show cause notice were issued to the petitioners, no proof have been filed to substantiate the same. According to the learned counsel, the petitioners did not receive any show cause notice. Therefore, non issuance of show cause notice before filing the complaints would itself fatal and on this ground also, the complaints filed by the respondent are liable to be quashed.

6. In support of his contentions, the learned counsel appearing for the petitioners would place reliance upon the judgments reported in CDJ 1972 SC 359 : 1973 Crl.L.J. 347 - State of Bihar v. Deokaran Nenshi; CDJ 1983 Cal HC 178 - National Cotton Mills Ltd v. Assistant Registrar of Companies); (1988) 3 Crimes 356 - Indian Die C.C.P. Ltd v. State (Case No.1089 of 1983 – Calcutta High Court - dated 13.05.1988); and 1990 (69) CompCas 442 Cal: 94 CWN 412 – Luxmi Printing Works Ltd v. Assistant Registrar of Companies dated 26.07.1989

7. Per contra, the learned counsel appearing for the respondent would contend that, the petitioner admittedly failed to submit annual returns of the company and failed to submit the balance sheet and profit and loss account of the company as contemplated under the Act which are offences under Sections 159 and 220 of the Act and punishable under Section 162 of the Act, which provides for punishment of fine which may extend to five hundred rupees for every day during which the default continues. The petitioners did not comply with the provisions and failed to submit the annual returns and balance sheet and profit and loss account of the company till date of filing of the complaints. As the offences are continuing offence, under Section 472 of Cr.P.C., fresh period of limitation shall begin to run on every moment of time during which the offence continues and as such, there is no limitation for filing the complaints.

8. Insofar as the issuance of show cause notice is concerned, the learned counsel appearing for the respondent would contend that the respondent issued show cause notice to the petitioners which were duly acknowledged by the petitioners. Despite receipt of show cause notice, the petitioners did not rectify the default and therefore, it is not open to them to contend that no show cause notice were issued to them and the respondents would be able to prove the service of show cause notice on the petitioners at the time of trial.

9. The learned counsel appearing for the respondent in support of his contention would place reliance upon the judgments reported in 1997 (1) CTC 383 - Assistant Registrar of Companies v. Premier Synthetics Pvt Ltd; 2003 (45) SCL 500 Mad - C.K.Ranganathan v. Registrar of Companies; MUV Technologies Limited v. Deputy Registrar of Companies, Tamil Nadu (Crl.O.P.No.16188 to 16191 of 2011 dated 01.08.2018); and T.G.Krishnamurthy v. Assistant Registrar of Companies (Crl.O.P.No.27692 to 27703 of 2005 dated 19.12.2008).

10. I have considered the rival submissions carefully.

11. The primordial question to be decided in these matters is, as to whether offences under Section 159 and 220 of the Companies Act, 1956 which are punishable under Section 162 and 220(3) of the Companies Act, 1956, are continuing offences are not?

12. The expression “continuing offence” has not been defined in the Code of Criminal Procedure, 1973. However, the courts have explained the same in number of judgments. In the case of continuing offence, the ingredients of offence continues even after the offence takes place, whereas in an instantaneous offence, the offence took place once and for all, in such case, there is no continuance of offence. For the offence arising out of a failure to comply with a statutory provision, which is involves penalty, the liability continues until the default is complied with complied with and on every moment of such non compliance occurs and recurs, there is an offence committed and it is a continuing offence until the default is complied with.

13. In Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435, the Honourable Supreme Court has explained the expression "continuing offence" as under:-

> “25. In Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath [(1991) 2 SCC 141 : 1991 SCC (Cri) 315] this Court dealt with the issue and held as under : (SCC pp. 145-46, para 7)
>
> > “7. … According to Black's Law Dictionary, [5th Edn. (Special Deluxe)], ‘continuing’ means ‘enduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences’. Continuing offence means ‘type of crime which is committed over a span of time’. As to period of statute of limitation in a continuing offence, the last act of the offence controls for commencement of the period. ‘A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that

> singleness of thought, purpose or action which may be deemed a single impulse'. So also a 'continuous crime' means 'one consisting of a continuous series of acts, which endures after the period of consummation, as, the offence of carrying concealed weapons. In the case of instantaneous crimes, the statute of limitation begins to run with the consummation, while in the case of continuous crimes it only begins with the cessation of the criminal conduct or act.'"

26. While deciding the case in Gokak Patel Volkart Ltd. [(1991) 2 SCC 141 : 1991 SCC (Cri) 315] , this Court placed reliance upon its earlier judgment in State of Bihar v. Deokaran Nenshi [(1972) 2 SCC 890 : 1973 SCC (Cri) 114 : AIR 1973 SC 908] , wherein the Court while dealing with the case of continuance of an offence has held as under : (Deokaran Nenshi case [(1972) 2 SCC 890: 1973 SCC (Cri) 114 : AIR 1973 SC 908] , SCC p. 892, para 5)

> "5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the

> ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

(See also Bhagirath Kanoria v. State of M.P. [(1984) 4 SCC 222 : 1984 SCC (Cri) 590 : 1985 SCC (L&S) 30 : AIR 1984 SC 1688] , SCC p. 227, para 10 and Amrit Lal Chum v. Devoprasad Dutta Roy [(1988) 2 SCC 269 : 1988 SCC (Cri) 339 : AIR 1988 SC 733] .)

27. In Raymond Ltd. v. M.P. Electricity Board [(2001) 1 SCC 534 : AIR 2001 SC 238] this Court held as under : (SCC p. 549, para 18)

> "18.… It cannot legitimately be contended that the word 'continuously' has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean 'recurring at repeated intervals so as to be of repeated occurrence'. That apart, used as an adjective it draws colour from the context too…."

28. In SankarDastidar v. Banjula Dastidar [(2006) 13 SCC 470 : AIR 2007 SC 514] this Court observed as under : (SCC p. 472, para 8)

> "8. A suit for damages, in our opinion, stands on a different footing vis-à-vis a [continuous] wrong in respect of enjoyment of one's right in a property. When a right of way is claimed whether public or private over a certain land over which the tortfeasor has no right of possession, the breaches would be continuing one. It is, however, indisputable that unless the wrong is a continuing one, period of limitation does not stop running. Once the period begins to run, it does not stop except where the provisions of Section 22 of the Limitation Act would apply."

The Court further held : (Sankar Dastidar case [(2006) 13 SCC 470 : AIR 2007 SC 514] , SCC p. 472, para 9)

> "9. Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion; knowledge as regards possession of the party shall be the starting point of limitation in terms of Article 68. For any other specific movable property, the time from which the period begins to run would be when the property is wrongfully taken, in terms of Article 69. Article 91 provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful."

29. Thus, in view of the above, the law on the issue can be summarised to the effect that, in the case of a continuing offence, the ingredients of the offence continue i.e. endure even after the period of consummation, whereas in an instantaneous offence, the offence takes place once and for all i.e. when the same actually takes place. In such cases, there is no continuing offence, even though the damage resulting from the injury may itself continue."

14. The Companies Act, 1956, provides different kinds of punishments for various offences committed by the companies. For certain offences, took place once and for all, the Act provide only maximum punishment. For some kind of offences, for example, under Section 159, 160,161 and 220 of the Act, relating to non filing of returns and some other documents before the Registrar of Companies, the punishment is provided under Section 162 of the Act, which reads as follows:-

> "162. (1) If a company fails to comply with any of the provisions contained in section 159, 160 or 161, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.
>
> (2) For the purpose of this section and sections 159, 160 and 161, the expression "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act."

There is a clear distinction between the punishment. The penalty of payment of fine for every day till the default continues, indicates that, the offence continues until the default is complied with, which makes the offence a continuous offence.

15. In cases where the offence is a continuing offence, section 472 of Cr.P.C. saves limitation and a fresh period of limitation shall begin to run every moment of the time during which the offence continues. The relevant provision in the Code read as under:-

> "472. Continuing offence. In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. "

16. Our High Court has taken a consistent view that the offence under Sections 159 and 220 of the Companies Act are the continuing offences. In Kalaimagal Corporation Limited, in Re (1987) LW (Crl.) 501, after having distinguished a judgment of a Division Bench of the Calcutta High Court in National Cotton Mills v. Assistant Registrar of Companies (supra) has held that offences under Section 159 and 220 of the Companies Act are continuing offences and hence, the bar under Section 468 of Cr.P.C. would not apply as the offences are saved by Section 472 of Cr.P.C.

17. The above said judgment has been followed by this court in another matter reported in 1997(1) CTC 382 (Assistant Registrar of Companies, Tamil Nadu v. M/s.Premier Synthetics Private Limited) wherein, it has been held as under:-

"6. In these cases under consideration, some of the complaints relate to violation of section 159 of the Companies Act and some of the cases relate to violation of section 220 of the Companies Act. The violation under section 220 of the Companies Act is made punishable in section 162 of the Companies Act. The violation of section 159 of the Companies Act is also made punishable under section 162 of the Companies Act. The view of the learned Magistrate that the offences under sections 159 and 220 of the Companies Act, are not continuing offences and once an offence is done it is completed for all practicable purposes on that day itself, is opposed to at least three rulings of this court. There are other judgments of various other High Courts, some holding that the offences under sections 159 and 220 of the Companies Act are continuing offences and some holding the contra view. However, in view of the settled position of law rendered by our High Court, I am not referring to any of the judgments of the other High Courts to decide that question. The question whether the offences referred to above are continuing offences or not is the subject-matter of three decisions and they are as follows :

> Kalaimagal Corporation Ltd., In re [1987] LW Crl. 501; Dhanalakshmi Chemical Industries Pvt. Ltd., In re [1988] LW Crl. M.P. Nos. 7417 of 7419 of 1986.

7. The first two judgments have been rendered by Justice Mrs. Padmini Jesudurai J. and the last one was rendered by Justice Mr. T.S. Arunachalam J. (as he then was). Uniformly all the judgments hold that the offences complained of in these complaints are continuing offences and, therefore, the period of limitation prescribed in law is not attracted. In view of the settled position of law, I have no hesitation in setting aside the orders impugned in each of the revision cases and remand the matter back to the trial court for further action in accordance with law."

18. In T.G.Krishnamurthy v. Assistant Registrar of Companies (Crl.O.P.No.27692 to 27703 of 2005 dated 19.12.2008) following the judgments of this court cited supra, a learned single Judge of this Court has held as under:-

> "17. In view of the said categorical pronouncement coupled with the averments made in the complaint, this court is of the view that since the offence alleged against the petitioners is a continuing one, it is not barred by limitation and the cognizance taken by the trial Court is valid and sustainable. "

19. In MUV Technologies Limited v. Deputy Registrar of Companies, Tamil Nadu (Crl.O.P.No.16188 to 16191 of 2011 dated 01.08.2018), this Court following the above stated judgments has held that the offences are continuing offences and therefore, the period of limitation prescribed under the Code would not get attracted.

20. So far as the judgments of the Division Bench of the Calcutta High Court (cited supra) relied upon by the learned counsel for the petitioners to support him that the offences under Section 159 and 220 of the Companies Act, 1956 are not continuing offences, this court in Kalaimagal Corporation Limited (cited supra) already considered the above judgments and distinguished the same and held that those offences are continuing offences. I am inclined to subscribe the above view.

21. In the light of the consistent view taken by this court, this court has no hesitation to hold that offence under Sections 159 and 220 of the Companies Act, 1956 are continuing offences and the bar created under Section 468 of Cr.P.C. will not get attracted as those offences are saved by the provisions of Section 472 of Cr.P.C.

22. Insofar as the next contention of the learned counsel appearing for the petitioner regarding issuance of show cause notice is concerned, it is being disputed question of fact, it could be decided only in the trial and that cannot be a ground to quash the complaints invoking section 482 of Cr.P.C. by this court.

23. For the foregoing discussions, this court do not find any merits in the original petitions and the same deserve only to be dismissed.

In the result, the Criminal Original Petitions are dismissed. Consequently, connected MPs stand closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk
To

The Additional Chief Metropolitan Magistrate,
E.O.I, Egmore, Chennai.

+1cc to Mr.C.Rajan, Advocate Sr.2337
+1cc to Mr.A.Kumaraguru, Advocate Sr.2285

Criminal Original Petition
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5468 to 5471 of 2015

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