IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.07.2022**

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P. No.6742 of 2022 & Crl.M.P.Nos.3823 & 3824 of 2022

1. Manulakshmi
2. Karthik Gunasekaran ... Petitioners

Vs.

The Assistant Registrar of Companies, Tamil Nadu
Having Office at Shastri Bhavan,
No.26, Haddows Road, Chennai – 600 006. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to E.O.C.C.No.10 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences – 1, Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Deivanandam

For Respondent : Mr.L.Infant Dinesh
Central Government Standing Counsel

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in E.O.C.C.No.10 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences – 1, Egmore, Chennai under section 207[4] of the Companies Act, 2013.

2. The complaint was filed on the premise that the complainant issued summon dated 17.10.2018 to attend the office of the respondent on 30.10.2018. Despite receipt of summons, the petitioner has not appeared and therefore, the private complaint has been filed.

3. The learned counsel appearing for the petitioner would submit that originally notice under section 206[1] of the Companies Act was issued for production of DPT3 and DPT4 forms. However, the petitioners have not filed those documents. Thereafter, they have filed a compounding petition to compound the offence along with DPT 3 and DPT 4 forms. After verification of the forms, the compounding was accepted and the prosecution initiated in that regard has already been withdrawn. Thereafter, summons under section 207 of the Companies Act was issued for production of very same documents, which is the subject matter of the present

complaint. It is further submitted that once forms have already been verified and accepted by the respondent, there cannot be any further prosecution.

4. The learned counsel appearing for the respondent would submit that two different prosecutions have been initiated against the petitioner under sections 206 and 207 of the Companies Act and they are operating in a different field. Section 206 of the Companies Act deals with production of document. Whereas, Section 207 of the Companies Act deals with disobedience of summons issued by the Registrar or Inspector. Hence, submitted that the prosecution has issued summons, which has not been complied and the same attracts punishment.

5. I have perused the entire materials available on record. The facts as culled out above is not disputed by both sides. Originally, notice under section 206 of the Companies Act was issued to produce DPT 3 and DPT 4 forms, which has not been complied and thereafter, it was compounded and the forms were verified and accepted. No further irregularities have been found by the respondent.

6. It is relevant to extract Section 206[a] [b] of the Companies Act.

Section 206: Power to call for information, inspect books and conduct inquiries.

206. (1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—

(a) to furnish in writing such information or explanation; or
(b) to produce such documents,
within such reasonable time, as may be specified in the notice.

7. A perusal of the above provision makes it clear that non production of the document attracts only fine which may extend to Rs.one lakh and for continuing the offence Rs.500/- for every day. Whereas Section 207 of the Companies Act reads as follows :

"Section 207: Conduct of inspection and inquiry.

207. (1) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

(2) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—

(a) make or cause to be made copies of books of account and other books and papers; or

(b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this

section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company."

8. A careful perusal of the Section 207 [2] and [3] of the Companies Act makes it clear that only for the purpose of making inspection or enquiry, Registrar and Inspector have all the powers as vested in a civil court under the Code of Civil Procedure, 1908, for discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or Inspector making the inspection or inquiry and summoning and enforcing the attendance of persons and examining them on oath and inspection of any books, registers and other documents of the company at any place and the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry and summoning and enforcing the attendance of persons and examining them on oath and inspection of any

books, registers and other documents of the company at any place. The above section makes it clear that for the purpose of making any enquiry or inspection any document is required to be produced or appearance of the parties is required, when there is disobedience, Section 207 will be attracted.

9. It is not the case of the prosecution that only for the purpose of inspection or conducting any enquiry, they sought details of any other document or appearance of the parties. Whereas, summons was issued for appearance of the person with regard to DPT 3 and 4 forms and not for any other documents. Admittedly, DPT 3 and 4 forms have been verified and accepted while compounding the offence under section 206 of the Companies Act. No doubt, Sections 206 and 207 of the Companies Act operate in different fields, the fact remains that for conducting any other enquiry or inspection of any other documents, summons ought to have been issued. When the summons have been issued with regard to the document which has already been scrutinized by the respondent while compounding the offence and no further enquiry is needed, this Court is of the view that there cannot be prosecution once again for non appearance of the person for production of the very same documents. In such view of the matter, prosecution is maintainable only when the production of the documents

have been suppressed and the same are required for any inspection or inquiry to find out some other irregularities, the prosecution under section 207 is certainly maintainable. But as already stated, summons itself have been issued only for the purpose of production DTP 3 and DTP 4 forms, which have already been scrutinized by the respondent/complainant and accepted and compounding is also accepted and prosecution has already been withdrawn. In such view of the matter, second prosecution for production of the very same documents certainly amounts to double jeopardy. Therefore, the prosecution initiated against the petitioner is liable to be quashed.

10. Accordingly, this Criminal Original Petition is allowed and the proceedings in E.O.C.C.No.10 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences – 1, Egmore, Chennai, is quashed. Consequently, connected miscellaneous petitions are closed.

04.07.2022

vrc

To,

1. The Assistant Registrar of Companies, Tamil Nadu
   Having Office at Shastri Bhavan,
   No.26, Haddows Road, Chennai – 600 006.

2. The Public Prosecutor,
   High Court of Madras.

N. SATHISH KUMAR, J.

vrc

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