IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.515 to 517, 521 to 523, 525 to 527,
529 to 532 of 2016
and Crl.M.P.Nos.3534 to 3536, 3616 to 3618,
3557 to 3559, 3562 to 3565 of 2016

Crl.R.C.No.515 of 2016

Vasanthakumar Suputhrappa ... Petitioner

Vs.

State:
The Deputy Registrar of Companies,
Tamil Nadu,
Having Office at Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006. ... Respondent

Prayer in Crl.R.C.No.515 of 2016: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.1248 of 2014 in E.O.C.C.No.323 of 2011 on 23.03.2015 on the file of the learned Additional Chief Metropolitan Magistrate [E.O.II], Egmore, Chennai.

For Petitioner
in all Crl.RCs. : Mr.V.Selvaraj
for Mr.D.Prabhu Mukunth Arunkumar

For Respondent
in all Crl.RCs. : Mr.A.Kumaraguru
Senior Panel Counsel for
Central Government

COMMON ORDER

These revisions challenge the orders of learned Additional Chief Metropolitan Magistrate [E.O.II], Egmore, Chennai, passed in Crl.M.P.Nos.1226, 1227, 1228 and 1229 of 2014 in E.O.C.C.No.320 of 2011, Crl.M.P.Nos.1236, 1234 and 1235 of 2014 in E.O.C.C.No.321 of 2011, Crl.M.P.Nos.1241, 1242 and 1240 of 2014 in E.O.C.C.No.322 of 2011 and Crl.M.P.Nos.1248, 1247 and 1246 of 2014 in E.O.C.C.No.323 of 2011, on 23.03.2015.

2.The respondent/complainant filed a complaint against these petitioners for the offence under Section 162 of the Companies Act, 1956, for non-filing of Balance Sheet in keeping with Section 220 of Companies

Act, 1956 for the financial year 2006-2009. The petitioners/accused filed petitions u/s.633 of the Companies Act r/w Section 463 of Companies Act, 2013, seeking discharge. The Court below by a common order dated 23.03.2015, dismissed such petitions. Hence, these revisions.

3.Heard the learned counsel for the petitioners, the learned Senior Panel Counsel for Central Government for the respondent and perused the materials available on record.

4.Learned counsel for the petitioners submitted that the offence complained stands compounded insofar as A1, M/s.Chruch of South India Trust Association (CSITA) and A9, Director, are concerned. When the case against the company itself stands compounded, the prosecution against these petitioners, who are informed to be Directors thereof cannot stand. It is further submitted that A1 though registered as a company, his character is in the nature of religious charitable one and no part of it is distributed as dividend to its members. The petitioners being the Director, hold offices in an honorary capacity for a period of two years. The members demit office biennially and no fee of any kind whatsoever is paid to the members of the Managing Committee or to the Directors of A1 company. The jurisdiction of A1 company covers the 21 Dioceses and other units under their control spread over the four Southern States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and also Union Territory of Puducherry. The person chose to function as Directors and other Members of Managing Committee of A1 company are persons of great eminence, respect and standing in society chosen for their integrity of character and their capacity to guide A1 company in achieving its objectives and to ensure that A1 company can do good to the greatest number. The Directors and Members of the Managing Committee shall ensure that no systematic loopholes remained in this aspect. Thus to ensure A1 is properly administered giving no room for any mismanagement and impropriety in the functioning of its units. The petitioners are only serving in an honorary capacity, such technical violations and facing criminal case will demotivate persons taking responsibility of the management of A1 company and the same will have deleterious consequences in functioning of A1 company and Managing its properties.

5.The learned Senior Panel Counsel for Central Government appearing for the respondent submitted that A1 company filed the balance sheet belatedly and compounded the offence. But as far as the petitioners are concerned, they have not filed any compound application before the competent authority getting relief under Section 633 of the Companies Act. The benefit of compounding can be ensure to the persons acted honestly and reasonably. A1 and A9 having been compounded, the same relief can be granted to them either before this Court in which the case is pending or before the concerned authorities.

6.The learned counsel for the respondent further submitted that each of the Officers in default is treated as a distinct and separate offender in the eye of law. The effect of compounding of the offence as regards the company would be the acquittal of the accused/company with whom the offence has been compounded. The same will not set at naught the prosecution against the other accused

7.This Court on the submissions finds it apposite to extract the relevant provisions. Section 162 of the Companies Act, 1956, reads thus:

"*(i) 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 expressions "officer" and "director" shall include any person in accordance with whose directions or instructions the Board of directos of the company is accustomed to act".

8.Section 5 of the Companies Act, 1956, reads thus:

"*For the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any punishment or penalty, whether by way of imprisonment, fine or otherwise, the expression "officer who is in default" means all the following officers of the company, namely:*

(a) the managing director or managing directors,

(b) the whole-time director or whole-time directors,

(c) the manager,

(d) the secretary,

(e) any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act,

(f) any person charged by the Board with the responsibility of complying with that provision, provided that the person so charged has given his consent in this behalf to the Board,

(g) where any company does not have any of the officers specified in clauses (a) to (c) any director or directors who may be specified by the Board in this behalf or where no director is so specified, all the directors,

provided that where the Board exercise any power under clauses(f) or clause(g), it shall, within thirty days of the exercise of such powers, file with the Registrar a return in the prescribed form".

9.The Apex Court had held as follows in fastening liability on the Directors in cases of deemed office in the case of ***S.M.S.Pharmaceuticals Ltd., v. Neeta Bhalla (2005 SCC (CRI) 1975)***, the Hon'ble Supreme Court informed that towards sustaining a prosecution against a Director of a company, which is being prosecuted for offence under Section 138 of the Negotiable Instruments Act, 1881, the averments that the person concerned was in charge of and responsible to the company in the conduct of the affairs is an absolute must. It has been so held keeping in mind Section 141 of the Negotiable Instruments Act, which reads thus:

> *141. Offences by companies:- (1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:*
>
> *[Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State*

Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other office shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this section,-

(a) "company" means any body corporate and included a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

10.Following the rationale of the decision in ***S.M.S.Pharmaceuticals Ltd., v. Neeta Bhalla (2005 SCC (CRI) 1975)***, this Court holds that in arraying persons as accused in respect of offences committed by companies and as "officers in default" it would be necessary to inform in the body of the complaint how they fulfil such capacity. In the instant case, the complaints fail on such count.

11.This Court on earlier occasion in batch of criminal revisions in Crl.RC.Nos.1293 to 1296 of 2015 & 1318 to 1326 of 2015, by order, dated 27.01.2018 considered the contention of the other Directors and discharged them from the cases. The petitioners, who are now before this Court, are similarly placed. The relevant portion of the order is extracted hereunder:-

> "*10.This Court would allow these revisions for the following reasons:*
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> *To state the obvious, not all concerned with the affairs of a company would fall without the meaning of 'Officer in default'. To sustain a complaint against a person in relation to an offence committed by a company, it would be necessary to inform in the complaint how such person is liable as an 'officer in default'. Reading of the complaint in the present case informs "that the accused A-2 to A-12 are Directors of the Company when the offence was committed as per the particulars filed in the office of the complainant and they*

are officers who are in default within the meaning of Section 5 of the Act." Such statement in the complaint would not suffice to maintain the prosecution. The effect of accepting such a statement would be that those who really do not fall within the description of 'Officer in default' with the meaning of Section 5 of the Companies Act would be required to face the rigour of trial."

12.This Court on the submissions and materials finds that the petitioners are serving in a honorary capacity to A1 company which predominantly is of religious character. Apart from managing the Trust, they are doing service to the society by running schools, colleges, hospitals and other institutions for the welfare of the public at large, for a very long time even prior to independence. The petitioners are similarly placed as that of other Directors, who have been discharged by this Court, vide order, dated 09.12.2022.

13.For the aforesaid reason, these revisions shall stand allowed and the orders of learned Additional Chief Metropolitan Magistrate (E.O.II)(I/c), Egmore, Chennai, passed in Crl.M.P.Nos.1226, 1227, 1228 and 1229 of

2014 in E.O.C.C.No.320 of 2011, Crl.M.P.Nos.1236, 1234 and 1235 of 2014 in E.O.C.C.No.321 of 2011, Crl.M.P.Nos.1241, 1242 and 1240 of 2014 in E.O.C.C.No.322 of 2011 and Crl.M.P.Nos.1248, 1247 and 1246 of 2014 in E.O.C.C.No.323 of 2011, on 23.03.2015, are set aside. Consequently, connected miscellaneous petitions are closed. In fine, the petitioners are discharged from E.O.C.C.Nos.320 to 323 of 2011.

09.12.2022

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes

cse/vv2

To

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

2.The learned Additional Chief
Metropolitan Magistrate [E.O.II],
Egmore, Chennai.

M.NIRMAL KUMAR, J.

cse

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525 to 527, 529 to 532 of 2016

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