



Crl.R.C.No.533 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.533 of 2016
and Crl.M.P.No.3566 of 2016

Philip Mani Modayil

... Petitioner

Vs.

State:

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

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.1222 of 2014 in E.O.C.C.No.320 of 2011 on 23.03.2015 on the file of the learned Additional Chief Metropolitan Magistrate [E.O.II], Egmore, Chennai.

For Petitioner : Mr.V.Selvaraj
for Mr.D.Prabhu Mukunth Arunkumar

For Respondent : Mr.A.Kumaraguru
Senior Panel Counsel for
Central Government



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ORDER

This revision challenges the orders of learned Additional Chief Metropolitan Magistrate [E.O.II], Egmore, Chennai, passed in CrI.M.P.No.1222 of 2014 in E.O.C.C.No.320 of 2011 on 23.03.2015.

2.The respondent/complainant filed a complaint against these petitioner 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 petitioner/accused filed a petition 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 the petition. Hence, this revision.

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



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4.It is submitted that though the petitioner was projected as Officer in default of the Company who failed to comply with the statutory requirements, the petitioner was serving, in a honorary capacity not drawing any benefits. The Trial Court without application of mind merely extracted the petitioner's contention as well as respondent's content, provisions of law and not considered the submissions and mechanically dismissed the petition with the observation that the petitioner is entitled to raise the points as defence during the course of trial. Further, the Trial Court not given a finding that the petitioner's contention does not merit consideration. It is also not disputed that the offences against A1 Company and A9 Director were compounded by the Trial Court in CrI.M.P.No.894 of 2014 dated 30.04.2014. Admittedly, the case against the petitioner is non-filing of balance sheet, Profit and loss account before the Annual General Body Meeting on or before 30.10.2009. Further, for violation under Section 220 of the Companies Act, 1956, it is only imposition of fine and for the offence of this nature, cognizance ought to have been taken within six months as per Section 468 Cr.P.C. In this case, admittedly the violation commenced from



30.10.2009 with a grace period of 30 days. A show cause notice was issued nearly after seven years on 07.07.2011. Added to it, the complaint was filed on 26.07.2011 without giving proper opportunity and time for the petitioner to give his explanation which would amount to violation of principles of natural justice and on this score alone, complaint against the petitioner can be quashed.

5.Learned Senior Panel Counsel for Central Government appearing for the respondent/complainant fairly submitted that as against A1 Company and A9 Director, the offences were compounded. He would submit that the case against, some of the accused got quashed, against the present petitioner, the petitioner being the Chief Executive Officer he is to be considered as Officer in default as per Section 5 of the Companies Act, 1956. He further submitted that a show cause notice was issued on 07.07.2011 for non-filing of the returns before the Annual General Body Meeting for the year 2009, there is some delay in issuance of show cause notice. He would further submit that the petitioner not denied receipt of show cause notice, the petitioner takes a technical plea that without giving



proper opportunity for his explanation, complaint was filed, thereby violating the principles of natural justice which is a matter to be decided during trial.

6.Considering the submissions made and on perusal of the materials, it is seen that as far as this petitioner is concerned, the petitioner is arrayed as A2 who is a Chief Executive Officer, an officer in default, considering the nature, object and purpose of A1 though registered as a Company, it is a non-profitable, charitable religious institution which is primarily into charities running Colleges, Schools, Hospitals and other Institutions of such nature, which covers 21 Dioceses and other Units under their control spread over the four Southern States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Union Territory of Pondicherry. The petitioner held the post as a Honorary Treasurer and further, in this case apart from A1 and A9 against whom offences compounded, the case against the other accused were quashed by this Court. Added to it, in this case show cause notice was issued on 07.07.2011 and within a short period without giving reasonable opportunity for reply to show cause notice, complaint filed, added to it there



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is considerable delay, no reason given for the same, which amounts to violation of principles of natural justice.

7.For the aforesaid reasons, this revision petition stands allowed and the order of learned Additional Chief Metropolitan Magistrate [E.O.II], Egmore, Chennai, passed in Crl.M.P.No.1222 of 2014 in E.O.C.C.No.320 of 2011, on 23.03.2015, is set aside. Consequently, connected miscellaneous petition is closed. In fine, the petitioner is discharged from E.O.C.C.No.320 of 2011.

09.12.2022

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



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M.NIRMAL KUMAR, J.

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