IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.11.2022
Pronounced on **22.12.2022**

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.15856 & 19542 of 2021 and
Crl.M.P.No.8649 of 2021

R.Subramanian

... Petitioner in both Crl.O.Ps

Vs.

The Deputy Registrar of Companies,
Tamil Nadu,
Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006. ... Respondent in both Crl.O.Ps

PRAYER in Crl.O.P.No.15856 of 2021 : Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the proceedings in EOCC 243/2011 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Chennai.

PRAYER in Crl.O.P.No.19542 of 2021 : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in EOCC 244/2011 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Chennai.

In Crl.O.P.No.15856 of 2021

For Petitioner : Mr.R.Subramanian, Party-in-person

For Respondent : Dr.D.Simon,
Central Government Standing Counsel

In Crl.O.P.No.19542 of 2021

For Petitioner : Mr.R.Subramanian, Party-in-person

For Respondent : Mr.T.L.Thirumalaisamy,
Central Government Standing Counsel

C O M M O N O R D E R

These Criminal Original Petitions have been preferred to quash the proceedings in EOCC 243/2011 and EOCC No. 244/2011, on the file of the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Chennai.

2. Heard Mr.R.Subramanian, Party-in-person and Dr.D.Simon, learned Central Government Standing Counsel and Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel for the respondent and perused the materials available on record.

3. <u>The complaint in brief:-</u>

The petitioner was the Managing Director of the first accused M/s.Subhiksha Trading Services Limited and he has been arrayed as the second accused in the said complaint; the complaint has been filed under Section 220 of the Companies Act, 1956 by the Deputy Registrar of the Companies, Tamil Nadu against the first and second accused on the allegations that the balance sheet and the profit and loss account of the Company for the financial year ending 31.03.2009 were required to be placed in the Annual General Body Meeting by not later than 30.09.2009 and further the same should be filed with the complainant's office not later than 31.10.2009; but the petitioner's Company failed to file them within the said date; a show cause notice has been issued on 27.01.2010; as the petitioner Company did not have any satisfactory reason, complaint has been given against the accused 1 and 2 for the offence punishable under Section 162 of the Companies Act, 1956.

4. The default in filing the returns would constitute a continuing offence within the meaning of Section 472 of Cr.P.C. The above proceedings were challenged by the petitioner by filing Crl.O.P.No.11589 of 2013 and it was dismissed on 03.02.2020; however, the petitioner challenged the same by way of filing a Special Leave Petition in SLP (Crl.) No.4953 of 2020 and in which, the Hon'ble Supreme Court has observed that certain vital points raised by the petitioner were not considered and hence the petitioner was given with a liberty to file a fresh petition and that shall be considered on the limited aspect and on its merit by the High Court; in view of the same, the petitioner has filed the present petitions seeking to quash the proceedings.

5. The one and only contention raised by the petitioner who appeared as party-in-person is that the respondent had issued the show cause notice dated 27.01.2010 on a wrong premise that the financial year has been ended on 31.03.2009 and for which, the returns ought to have been filed on or before 30.09.2009; actually the petitioner's Company has sought permission from the Ministry of Corporate Affairs to extend the financial year 2008 till 30.06.2008, in terms of Section 210 (4) of the Companies Act, 1956; since the previous financial year has been extended till 30.06.2008, the subsequent financial year would end only on 30.06.2009; the respondent has initiated action on the wrong presumption that the financial year for the next year has ended on 31.03.2009.

5.1. The petitioner's Company held its Annual General Body Meeting on 31.12.2009 and the returns were filed on or before 31.03.2010; and further the petitioner's Company was held to be wound up by an order dated 29.02.2012 passed on the Company Petition filed before the High Court; in view of Section 445(3) of the Companies Act, that would relate back to before 31st March 2009 through deemed fiction; even in that context also there is no requirement to file any Annual Returns at any date from 31.03.2009; the officers of the Company including the Directors, such as the petitioner are all discharged from the office once the Company is ordered to be wound up; so in any event, no such offence can be made out against the petitioner and the impugned proceedings should be quashed.

5.2. The petitioner who appeared in person also submitted that in view of the extension of the financial year obtained by the Company for the previous financial year, there cannot be any financial year ending on 31.03.2009; as per Section 210 of the Companies Act, 1956, the Board of Directors of the Company shall lay the balance sheet for the relevant financial year along with the profit and loss account for that period; however the period to which the above said account relates may be even more than a calendar year but it shall not exceed 15 months.

6. The learned Central Government Standing Counsels appearing for the respondent submitted that till now the petitioner has not filed the returns; as per the ministry of Corporate Affairs portal, petitioner did not file the Form 20-B for the financial year ending 31.03.2009 till date; the petitioner misrepresented the material facts before the Supreme Court of India and obtained directions *vide* its order dated 12.10.2020 to file a Petition under Section 482 Cr.P.C once again; as per Section 441(2) of the Companies Act 1956, the date of winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up; as per Section 445 of the Companies Act 1956, the officers and employees of the company will be discharged only after a company is ordered to be wound up; since the subject company was wound up by an order of the High Court dated 29.02. 2012, they can be discharged only subsequent to the said date.

7. The contention of the petitioner is that as per the order dated

07.01.2009 of the Government of India, Ministry of Corporate Affairs No.46/101/2008-CL-III, approval has been given for extending the financial year till 30.06.2008 instead of 31.03.2008. In that case, the next financial year would start only from 01.07.2008 to 30.06.2009. But the impugned proceedings has been taken by presuming that the financial year starts from 01.04.2008 to 31.03.2009. In fact as per the order of the Government of India referred earlier, the financial year for the previous year was ended on 30.06.2008. So the next financial year cannot be from 01.04.2008, but it can be from 01.07.2008 only and that will end by 30.06.2009. So the contention of the petitioner that the financial year for the next year ends by 30.06.2009 only and not as 31.03.2009, is valid and correct.

8. In view of the said reason, the first accused Company was required to hold its Annual General Body Meeting within six months from 30.06.2009 (i.e.) on or before 31.12.2009 and not on or before 30.09.2009. Hence the last date of filing the balance sheet and profit and loss account could be 31.01.2010, but the respondent has issued the show cause notice on 27.01.2010 which is prior to the cut off date.

9. The records would show that the petitioner has filed the returns manually with the covering letter dated 26.02.2010, wherein, it has been stated that the system was not accepting the e-documents. The letter has been enclosed with the Annual Return Form (Form 20B) along with the Demand Draft for Rs.500/-. Since the respondent had issued the show cause notice in a pre-matured manner and initiated criminal action subsequent to that without noticing the material facts, there is force in the arguments of the petitioner that the proceeding is illegal. It is further stated by the petitioner that the Company itself was wound up by an order passed in the Company Petition filed before this Court and the date of wounding up would relate back to March 2009. Whatever may be the case, the respondent has initiated the criminal action for the financial year which was not in existence and hence I feel it is appropriate to invoke the jurisdiction of this Court under Section 482 of Cr.P.C to quash the proceedings.

10. Further, since the Company is not in existence due to the wounding up order made on 29.02.2012 and the Company would relate back to the year ending 31.03.2009, there cannot be any question of filing Annual Accounts in respect of the said financial year. But the show cause notice that has been issued on the presumption that the Company is in existence during the relevant financial year is liable to be set aside.

11. In the result, Crl.O.P.No.15856 of 2021 is allowed and the proceedings in EOCC 243/2011 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

12. In the result, Crl.O.P.No.19542 of 2021 is allowed and the proceedings in EOCC 244/2011 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences II, Egmore, Chennai, is quashed.

22.12.2022

Index: Yes/No
Speaking / Non Speaking Order
gsk

R.N.MANJULA, J.

gsk

To

1.The Deputy Registrar of Companies,
Tamil Nadu, Shastri Bhavan,
No.26, Haddows Road,
Chennai 600 006.

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

3.The Public Prosecutor,
High Court, Madras.

Crl.O.P.Nos.15856 & 19542 of 2021 and
Crl.M.P.No.8649 of 2021

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