IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.521 OF 2017
&
CRL.M.P.NOS.379 & 380 OF 2017

Bernard Robert Hereford,
S/o. late E.J.Hereford ... Petitioner/Accused 13

.Vs.

The Deputy Registrar of Companies,
Tamil Nadu, Chennai,
Having office at II Floor,
Shastri Bhavan,
26, Haddows Road,
Chennai - 600 006. ... Respondent/Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in E.O.C.C.No.202 of 2013 pending on the file of Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Mohammed Rafi

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

ORDER

This petition has been filed to quash the private complaint filed against the petitioner, who has been arrayed as A13, which was taken on file by the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai in E.O.C.C.No.202 of 2013.

2. The crux of the allegation is that at the time of inspection, it was found that the Company has not maintained any

Register of Directors, Managing Director, Manager and Secretary containing the details of the name, address, occupation, nationality etc., as provided under Section 303(1) of the Companies Act, 1956 resulting in the launching of prosecution against the petitioner and other accused.

3. A perusal of the complaint reveals that totally 17 people have been arrayed as accused. It appears that out of seventeen, eight of them are ex-directors and all others are said to be Directors of the first accused. The entire allegation in the private complaint does not make any specific averments against any of the accused therein. Further, no allegation is made against the present petitioner regarding his role for such violation. It is also brought to the notice of the Court that at the relevant point of time, the petitioner was not a director of the company. The petitioner was inducted as a director only on 26.04.2010 and resigned from the post on 11.02.2014, Form No.DIR-11 is also available on record, which has not been disputed by the other side.

4. Though it is the contention of the learned counsel appearing for the respondent that the administration of the company has not been properly done, to invoke the penal provisions against the petitioner, it should be shown by the respondent that on the date of the alleged resolution or violation, the petitioner was the director or responsible for the affairs of the company. In similar nature of cases, this Court in Crl.O.P.Nos.21861 to 21865 of 2016 has quashed the proceedings initiated against the present petitioner mainly on the ground that he became the Director of the Church of South India Trust Association on 26.04.2010 and resigned from the directorship on 11.02.2014 and on the date of violation he was not a director. In such view of the matter, the prosecution initiated against the petitioner is certainly not maintainable.

5. Accordingly, this Criminal Original Petition is allowed and the proceedings in E.O.C.C.No.202 of 2013 pending on the file of learned Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1. The Additional Chief Metropolitan Magistrate
   (Economic Offences-II),
   Egmore, Chennai.

2. The Deputy Registrar of Companies,
   Tamil Nadu, Chennai,
   Having office at II Floor,
   Shastri Bhavan,
   26, Haddows Road,
   Chennai - 600 006.

3. The Public Prosecutor,
   Madras High Court,
   Chennai – 104.

+1cc to Dr.D.Simon, CGSC, S.R.No.1332

Crl.O.P.No.521 of 2017 &
Crl.M.P.Nos.379 & 380 of 2017

KV(CO)
PBS/27/01/2022