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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.28730,29238,29241,29244,29246,29247,29249,29250,29252
,29260,29263,29264,29265,29268,29273, 29274 & 29275 of 2019

CRL.O.P.No.28730 of 2019

1.M/s.Kanya Resorts Private Limited
No.14, Velnagar Extension,
Adambakkam, Chennai - 600 088.

2.M.G.Joseph
Director
No.14, Velnagar Extension,
Adambakkam, Chennai - 600 088.

3.Hamelton Anthony Joseph
Directorate
No.12, Velnagar Extension,
Adambakkam, Chennai - 600 088.

... Petitioners/A1 to A3

Vs.

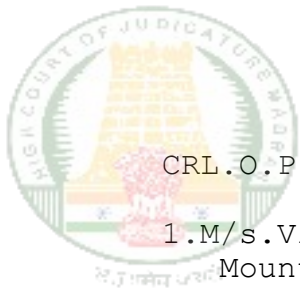
The Assistant Registrar of Companies
Tamilnadu
having office at Shastri Bhavan
No.26, Haddows Road,
Chennai - 600 006.

... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.379 of 2018 on the file of the learned Additional Chief Metropolitan Magistrate, Economic offences, Egmore, Chennai - 8 and quash the proceedings as an abuse of process of Law.

For Petitioners : Mr.T.R.Sivaram

For Respondent : Mr.K.Ramanamoorthy L.C.G.S.C.



CRL.O.P.No.29238 of 2019

1.M/s.Vikram Software Limited,
Mount Casa Blanca, 3rd Floor,
New No.260, Anna Salai,
Chennai - 600006.

2.S.Sivakumar Shunmuganathan,
Managing Director,
Flat No.2 C DBS Padmini Apartments,
New No.21, Thirumurthy Street,
T.Nagar, Chennai - 600017.

...Petitioners/A1 & A2 in CRL OP
Nos. 29241, 29244, 29246, 29247,
29249, 29250, 29252, 29260,
29263, 29264, 29265, 29268,
29273, 29274 & 29275 of 2019

Vs.

The Deputy Registrar of Companies
Tamilnadu
having office at Shastri Bhavan
No.26, Haddows Road,
Chennai - 600 006.

...Respondent/Complainant in CRL OP
Nos. 29241, 29244, 29246, 29247,
29249, 29250, 29252, 29260,
29263, 29264, 29265, 29268,
29273, 29274 & 29275 of 2019

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.629 of 2017, on the file of the learned Additional Chief Metropolitan Magistrate, Economic offences, Egmore, Chennai - 8 and quash the same.

PRAYER CRL.O.P.No.29241 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.626/2017, on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29244 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in EOCC NO.627/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29246 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.631/2017, on the file of the learned Additional Chief Metropolitan Magistrate, Economic



Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29247 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in EOCC NO.628/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29249 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.630/2017, on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same

PRAYER CRL.O.P.No.29250 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.632/2017, on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29252 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in EOCC NO.625/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29260 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.634/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29263 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.636/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29264 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.639/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.

PRAYER CRL.O.P.No.29265 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.637/2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and quash the same.



PRAYER CRL.O.P.No.29268 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C. No.624/2017 on the file of the Learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai. and quash the same.

PRAYER CRL.O.P.No.29273 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C. No.633/2017 on the file of the Learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai. and quash the same.

PRAYER CRL.O.P.No.29274 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C. No.635/2017 on the file of the Learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai. and quash the same.

PRAYER CRL.O.P.No.29275 of 2019: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C. No.638/2017 on the file of the Learned Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai. and quash the same.

In all Crl.O.Ps

For Petitioners : Mr.G.R.Hari for
Mr.V.Vijayakumar

For Respondent : Mr.K.Ramanamoorthy L.C.G.S.C.

COMMON ORDER

These Criminal Original Petitions have been filed to quash the criminal proceedings initiated against the petitioners in their respective cases, which have been filed for violating/defaulting to comply certain provisions of Companies Act, 1956/2013.

2. Petitioners alleged to have violated/not complied with the provisions of Companies Act. The list of the violations are as follows:

Crl.O.P.No.28730 of 2019:

The financial statement including the consolidated financial statement duly adopted for the year 2015-16 should have been filed with the complainant within thirty days of the date of the Annual General Meeting. The accused have not filed



the statements within the specified time and thus, not complied the provisions under Section 137 (1) r/w 137 (3) of the Companies Act, 2013.

Crl.O.P.No.29238 of 2019:

As per Section 220 of the Companies Act 1956, Balance Sheet and Profit and Loss Account in the prescribed form duly placed in the Annual General Meeting within 30 days from the date i.e., on or before 30.10.2013 and in case no Annual General Meeting was held, within 30 days of the due date of Annual General Meeting should be filed with the complainant. The copies of the Balance Sheets and Profit and Loss Account of the Company for the financial year ending 31.03.2013 has not been filed by the accused. Thus, the accused failed to comply with the statutory requirements of Section 220 punishable under Section 162 of the Companies Act.

Crl.O.P.No.29241 of 2019:

As per Section 166 of Companies Act 1956, the Annual General Meeting in respect of the financial year ending 31.03.2012 should have been held on or before 30.09.2012, accused has not conducted its Annual General Meeting for the financial year 2011-12. Thus, the accused defaulted to comply with the statutory provisions under Section 166 punishable under Section 168 of the Companies Act.

Crl.O.P.No.29244 of 2019:

The Balance Sheet and Profit and Loss Account for the financial year ending 31.03.2012 were required to be placed in the Annual General Meeting by a date not later than 30.09.2012 i.e., within six months of the close of the financial year. That was not done in this case. Thus, the accused defaulted to comply with the statutory requirements under Section 210 and thus, liable to be punished under Section 210 (5) of Companies Act 1956.

Crl.O.P.No.29246 of 2019:

The Balance Sheet and Profit and Loss Account of the Company for the financial year ending 31.03.2013 were required to be placed in the Annual General Meeting by a date not later than 30.09.2013 i.e., within six months of the close of the financial year. The accused have not placed the Balance Sheet and Profit and Loss Account in the Annual General Meeting and thus, contravened Section 210 and liable for punishment under Section 210 (5) of the Companies Act 1956.



Crl.O.P.No.29247 of 2019:

The Annual General Meeting of the company for the financial year 2012-13 should have been held latest by 30.09.2013 and the Annual Return made upto that date should have been filed with the complainant within 60 days from the said date, in case no Annual General Meeting was held, within 60 days of the due date of Annual General Meeting as per Section 159 of the Act, the accused have not filed Annual Return upto 30.11.2013, thereby, committed offences under Section 159 of the Act, which is punishable under Section 162 of the Act.

Crl.O.P.No.29249 of 2019:

The Annual General Meeting ought to have been held for the financial year ending 31.03.2013 on or before 30.09.2013. The accused have not conducted the Annual General Meeting for the financial year ending 31.03.2013, thus, violated the provisions under Section 166 punishable under Section 168 of the Companies Act, 1956.

Crl.O.P.No.29250 of 2019:

The Annual General Meeting of the company for the financial year 2013-14 should have been held latest by 30.09.2014 and the Annual Return made upto that date should have been filed with the complainant within 60 days from the said date, in case no Annual General Meeting was held, within 60 days of the due date of Annual General Meeting as per Section 159 of the Act, the accused have not filed Annual Return upto 30.11.2014, thereby, committed offences under Section 159 of the Act, which is punishable under Section 162 of the Act.

Crl.O.P.No.29252 of 2019:

As per Section 220 of the Companies Act 1956, accused should have filed Balance Sheet and Profit and Loss Account in the prescribed form duly placed in the Annual General Meeting within 30 days from the date of the said date ie., on or before 30.10.2012 and in case no Annual General Meeting was held, within 30 days of the due date of the Annual General Meeting. The accused have not filed the copies of the Balance Sheet and Profit and Loss Account with the complainant. Thus, violated the provisions under Section 220 r/w Section 220 (3) punishable under Section 162 of the Companies Act, 1956.

Crl.O.P.No.29260 of 2019:

The Annual General Meeting in respect of the financial year ending 31.03.2014 should have been held on or before 30.09.2014.



The accused have not conducted the Annual General Meeting for the financial year ending 31.03.2014. Thus, violated the provisions of Section 166, punishable under Section 168 of the Companies Act, 1956.

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CrI.O.P.No.29263 of 2019:

The Annual Return and copy of the financial statements, including the consolidated financial statements if any for the financial year ending 31.03.2015 should have been filed with the complainant within 60 days and 30 days respectively after the said documents were laid or ought to have been laid before the Annual General Meeting. The accused have not filed the Annual Return and financial statements and thus, violated Section 92 (4), punishable under Section 92(5) of the Companies Act, 2013.

CrI.O.P.No.29264 of 2019:

The Annual return and copy of the financial statements, including the consolidated financial statements if any for the financial year ending 31.03.2015 ought to have been filed with the complainant within 60 days and 30 days respectively after the said documents were laid or ought to have been laid before the Annual General Meeting. The accused have not filed the Annual Return and financial statements and thus violated Section 137(1), punishable under Section 137(3) of the Companies Act, 2013.

CrI.O.P.No.29265 of 2019:

The Company ought to have held its Annual General Meeting for the financial year ending 31.03.2015 on or before 30.09.2015. The financial statement for the financial year 2014-2015 should have been filed on or before 30.09.2015. The accused have not held the meeting and did not file the Annual Return and financial Statement and thus, committed violations under Section 96(1), punishable under Section 99 of the Companies Act 2013.

CrI.O.P.No.29268 of 2019:

The Annual returns for the financial year 2011-12 should have been filed with the complainant within 60 days from the date of holding the Annual General Meeting latest by 30.09.2012, in case no Annual General Meeting was held, within 60 days of the due date of the Annual General Meeting. The accused have not filed the Annual Returns up to 30.11.2012. Thus, violated the provisions under Section 159, which is punishable under Section 162 of the Companies Act, 1956.



Crl.O.P.No.29273 of 2019:

The Balance Sheet and Profit and Loss Account for the financial year ending 31.03.2014 were required to be placed in the Annual General Meeting not later than 30.09.2014 and in case no Annual General Meeting was held, within 30 days of the due date of the Annual General Meeting. The accused have not filed the copies of the Balance Sheet and Profit and Loss Account with the complainant. Thus, violated the statutory requirements under Section 220 of the Act, liable to be punished under Section 162 of the Companies Act, 1956.

Crl.O.P.No.29274 of 2019:

The Balance Sheet and Profit and Loss Account for the financial year ending 31.03.2014 were required to be placed in the Annual General Meeting by a date not later than 30.09.2014. The accused have not placed the Balance Sheet and Profit and Loss Account and contravened Section 210, punishable under Section 210 (5) of the Companies Act, 1956.

Crl.O.P.No.29275 of 2019:

The copy of the Annual Return and copy of the financial statement including the financial statement for the financial year 2014-15 should have been filed with the complainant within 60 days and 30 days respectively after the said documents were laid or ought to have been laid before the Annual General Meeting. The accused have not laid Annual Returns and financial statements with the complainant and thus, violated Section 129 (2) punishable under Section 129 (7) of the Companies Act 2013.

3.Challenging the criminal proceedings initiated in EOCC.Nos.379 of 2018, 629, 626, 627, 631, 628, 624, 630, 632, 625, 634, 636, 639, 637, 624, 633, 635, 638 of 2017 in Crl.O.P.Nos.28730, 29238, 29241, 29244, 29246, 29247, 29249, 29250, 29252, 29260, 29263, 29264, 29265, 29268, 29273, 29274, 29275 of 2019 respectively, these petitions have been filed for quashing.

4.The main grounds raised by the learned counsel for the petitioner in these petitions are:

(a) The show cause notice was sent on 24.10.2016, but the criminal complaint was filed on 20.10.2017, almost after 12 months. The offences are punishable with fine only. The period of limitation for launching the prosecution is six months as per Section 468 Cr.P.C. If the offences is punishable with imprisonment extending upto one year, the period of limitation is one year. However, the prosecution in all these cases for the offences committed during the period 2012-13 to 2014-15, was



launched only in 2017. All these cases are barred by limitation.

(b) The debts and liabilities of the first accused company had been cleared before 31.03.2010. The company was closed on 31.03.2011. Therefore, no Annual General Meeting was held and statutory reports were filed. The complainant should have struck off the company from its register as per Section 248(1) (e) of the Companies Act 2013 corresponding provision under Section 560 of the Companies Act 1956, after carrying physical verification that the company is not carrying any business or other operation for more than two years. That is not done in this case by the complainant.

5. Apart from this general submissions, the learned counsel for the petitioner in Crl.O.P.No.29238 of 2019 and batch of cases submitted with reference to the Crl.O.P.No.29263 of 2019 and Crl.O.P.No.29264 of 2019 as follows:

a) Section 92(5) and Section 137(3) of the Companies Act 2013 had been decriminalised by Section 16 and Section 22 of Companies Act 2019 respectively. The petitioners should be given benefit of the decriminalisation, as per the rule of beneficial interpretation. In this regard, he relied the judgments reported in 1. (1983) 1 SCC 177 T.Barai Vs. Henry Ah Hoe and another 2. 1995 SCC Online MP 380 Harikishan Vs. Union of India.

b) So far as Crl.O.P.No.29265 of 2019, he submitted that Section 99 of the Companies Act 2013 came into force only on 01.06.2016. Petitioner is alleged to have committed offence under Section 96(1) for the financial year ending 2015. Offence was completed even before section 99 of 2013 Act came into force. It is the settled position of law that penal statute cannot operate retrospectively or retroactively. Thus, the prosecution violated Article 20 (1) of the Constitution of India.

c) With regard to Crl.O.P.Nos.29238 of 2019, 29241 of 2019, 29244 of 2019, 29246 of 2019, 29247 of 2019, 29249 of 2019, 29250 of 2019, 29252 of 2019, 29260 of 2019, 29268 of 2019, 29273 of 2019, 29274 of 2019, the learned counsel for the petitioner submitted that in the above cases, petitioner faced prosecution under Companies Act 1956. The complaint had been filed in 2017, after repeal of 1956 Act and after 2013 Companies Act had been brought into force. Saving clause under Section 465(1) of the Companies Act 2013 saves only those prosecution instituted under the Companies Act 1956, which are pending immediately before the commencement of 2013 Act. Thus, continuation of these prosecutions are bad in law. In support of his submissions, he relied upon the judgment reported in (2009) 2 SCC 1 Mahmadhusen Abdulrahim Kalota Vs. Union of India



and others.

6.He further submitted that if the offence is not a continuing offence, cognizance cannot be taken beyond period of limitation. In support of this proposition, he relied the judgment reported in 2002 (1) CTC 321 C.K.Ranganathan Vs Registrar of Companies. It is observed in this order that since the offence under Section 211 (7) of the Companies Act is not a continuing one, the Judicial Magistrate ought not to have taken cognizance of the offence, after the expiry of the period of limitation, in view of the bar under Section 468 of Cr.P.C. and the proceedings are liable to be quashed. Thus, the learned counsel for the petitioner in CrI.O.P.No.29238 of 2019 and batch submitted that for the aforesaid reasons, the prosecution initiated against the petitioners in these cases are absolutely not in accordance with law and thus, liable to be quashed.

7.The learned counsel for the petitioner in CrI.O.P.No.28730 of 2019 adopted the submissions of the learned counsel appearing for the petitioner in CrI.O.P.No.29238 of 2019 and batch and further submitted that the complainant has not served the show cause notice to the petitioner before filing the criminal prosecution. Thus, violated the principles of natural justice audi alteram partem rule. There is no material produced to show that the show cause notice was sent either by registered post or by other means of communications. Though the petitioner completed the filing of the necessary forms immediately after issuance of summons, they have to incur heavy penalty since the violation is a continuing one till the date of filing to the complaint. The alleged act of the non service of the show cause notice prejudiced the petitioner to the hilt. Therefore, the proceedings in EOCC.No.379 of 2018 has to be quashed.

8.The learned counsel appearing for the respondent/complainant submitted that the petitioners have committed various offences under Companies Act 1956/Companies Act 2013. The show cause notice was sent on 24.10.2016. The complaint was filed 20.10.2017, within a period of one year. The offences concerned in this cases are continuing offences and there is no question of prosecution being barred by limitation. The petitioners cannot seek the benefit of amendment brought in Companies Act 2019 for the offences committed under the provisions of the Companies Act 1956/Companies Act 2013. The 2019 Act cannot be given retrospective effect, unless there is a specific provisions for giving retrospective effect. All these petitions have been filed only with a view to protract the proceedings and are liable to be dismissed.

9.In support of his submissions, the learned counsel for the respondent relied the judgment reported in 2008 SCC online



Mad 983 T.G.Krishnamurthy Vs. Assistant Registrar of Companies, Tamil Nadu for the proposition that violations of Section 220 of Companies Act, 1956 is made punishable under Section 162 of the Act and it is a continuing offence. To reach this conclusion, the judgment reported in (i) Kalaimagal Corporation Ltd., (1987) LW CrL. 501, (ii) Dhanalakshmi Chemical Industries P.Ltd., (1988) LW CrL. 181, (iii) an unreported judgment dated July 27, 1990 in CrL.M.P.Nos.7417 and 7419 of 1986 were relied. Relying on all these judgments, it was held that the violations of Section 220 punishable under Section 160 of the Companies Act is a continuing one and therefore, the prosecution is not barred by limitation and the cognizance taken by the trial Court is valid and sustainable. He also relied on the orders in CrL.O.P.Nos.2836, 2837 and 5468 to 5471 of 2015 for the proposition that the offences under Sections 159 and 220 of Companies Act which are punishable under Section 162 and 223 of Companies Act 1956 are continuing offences.

10.The judgment reported in (2013) 2 SCC 212 Sukhdev Singh Vs. State of Haryana is relied for the proposition that no law can be interpreted so as to frustrate the very basic rule of law. It is a settled principle of interpretation of the criminal jurisprudence that the provisions have to be strictly construed and cannot be given a retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial.

11.The judgment reported in AIR 1966 SC 1953 Sree Bank Ltd. Vs. Sarkar Dutt Roy and Co. is relied for the proposition that provisions of enactments operate prospectively. The relevant portion of the judgment is extracted hereunder:

4.The general rule no doubt is, as was stated by Wright J. in In re. Athlumney, (1) "Perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

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38.It is not necessary for the retrospective operation of the provision of an Act that it must be stated that its provisions would be deemed to have always existed. That is one mode and may be an effective mode of providing that the provisions would have retrospective effect. Retrospective effect of an enactment can also be gathered from its language and the object and intent of the legislature in enacting it.

39.In *The Queen v. Vine*(1) an enactment which was penal in nature was construed to have retrospective effect despite the rule that when an enactment is penal in nature it is not to be construed retrospectively if the language is capable of having a prospective effect given to it and is not retrospective, as the object of the enactment was not to punish offenders but to protect the public against public-houses in which spirits were retailed being kept by persons of doubtful character.

The judgment reported in (2015) 1 SCC 1 Commissioner of Income Tax (Central) - I, New Delhi Vs. Vatika Township Private Limited is relied for the same proposition. It is observed as follows:

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when



introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

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Thus, the learned counsel for the respondent submitted that the grounds raised by the learned counsel for the petitioners for quashing the proceedings cannot be entertained and these questions have to be considered only in the trial and thence, prayed for dismissal of these petitions.

12. Considered the rival submissions and perused the records.

13. It is the case of the respondent that the offences committed by the petitioners are continuing offence and therefore, the prosecution is not barred by limitation for the reason that the offence continues every day till the date of filing of complaint. On the other hand, the submissions of the learned counsel for the petitioners is that the offence is not a continuing one and it is a one time offence. In the case of State of Bihar Vs. Deokaran Nenshi and another, AIR 1973 SC 908, the Apex Court has laid down as follows:

5.A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance, occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

14. In some of these cases, the petitioners are prosecuted for violating certain statutory requirements under the Companies Act and thus, violations are punishable with fine or imprisonment. In some cases fine is liable to be paid for each



and every day the violation continues. In those cases, where fine is to be imposed for each and every day, the violation continues, it can be stated without any hint of doubt that the offence is a continuing offence. In some cases, the imprisonment or fine are prescribed without the continuation of fine for continuing violation. In that cases, the complaint should have been filed within the period of limitation prescribed under Section 468 Cr.P.C. Therefore, this Court is of the considered view that whether the offences alleged against the petitioners is a continuing offence or one time offence has to be decided on the basis of the offences committed and the punishment prescribed in each and every case.

15.The next contention of the learned counsel for the petitioner is that the first accused company was closed on 31.03.2011 and the debt and liabilities of the first petitioner company had been cleared before 31.03.2010. That was the reason why the Annual General Meeting was not conducted and statutory reports had not been filed. The complainant should have struck off the petitioner company from its register as per Section 248 1 (e) of 2019 Act. The analogous provision under the Companies Act 1956 is section 560.

16.There are two things to this matter. First thing is that there is no material produced by the petitioners to show that the first accused had stopped its operation and was closed in the year 2010. The respondent also has not raised any contrary claim to the claim made by the first accused/first petitioner in the counter filed by the respondent. However, it is for the petitioner to prove that it stopped its operation, cleared its debts and liabilities before 2010 and then the company was closed in the year 2011.

17. Section 560 of 1956 Act deals with powers of Registrar to strike the defunct company registered under 1956 Act from the register of companies under certain circumstances. Section 248 (1) of the 2013 Act deals with the powers of the Registrar to remove the name of the Company from the register of companies. The petitioners claim that under Section 248, the respondent ought to have removed the name of the company from the register of the companies for the reasons that the company is not carrying on any business or operations for a period of two years immediately preceding the financial year and after physical verification carried out. That was not done by the respondent in this case. However, sub section 2 of Section 248 gives an option to the company without prejudice to the provisions of sub section (1) a company may, after extinguishing all its liabilities, by a special resolution or at the consent of 75% members in terms of paid up share capital, file an application in a prescribed manner to the registrar for removing the name of

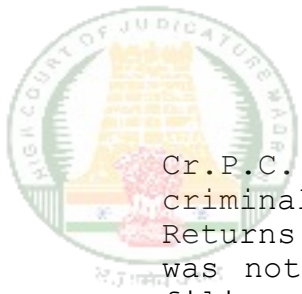


the company from the register of the companies on all or any of the grounds specified in sub section (1). Apparently the first accused company in Crl.O.P.No.29238 of 2019 and batch has not got any steps under these provisions for removing the name of the company from the register of companies on its stopping operations. In either case, it is for the petitioner to establish that it cleared its debts and liabilities and stopped its operations. As mentioned earlier, there is no material produced in support of his claim and therefore, the contention of the learned counsel for the petitioner advanced in this regard cannot be accepted.

18.The contention of the learned counsel for the petitioner in Crl.O.P.No.29265 of 2019 is that the case in EOCC No.637 of 2017 was filed for not filing the copies of the annual return and financial statements for the financial year 2014-15 on or before 30.09.2015 and thus, violated section 96(1), punishable under Section 99 of Companies Act 2013. It is further submitted that Section 99 was enforced only from 01.06.2016. Section 99 was not in force when the offence of not filing annual returns and financial statements was committed with reference to the financial year 2014-15. There is a substance in the contention of the learned counsel for the petitioner that prosecution cannot be launched for an offence, except for violation of law in force at the time of commission of the act charged as offence, nor subjected to a penalty greater than that might have been inflicted under the law in force at the time of commission of offence.

19.No doubt that Section 99 of 2013 Act was enforced only from 01.06.2016. The violation in this case is non filing of the copies of the Annual Returns and financial statements for the financial year 2014-15 on or before 30.09.2015. The prosecution was launched only after Section 99 came into force on 01.06.2016. The section defining the offence i.e. Section 96 of 2013 Act and penal section i.e. Section 99 of the Act are in the statute book of the Companies Act 2013. It is only the penal section which was given effect from 01.06.2016. The prosecution has been launched after 01.06.2016 i.e., in 2017. This Court finds that there is nothing illegal in launching the prosecution in E.O.C.C. No.637 of 2017 and therefore, the prayer for quashing of this case cannot be entertained.

20.Crl.O.P.No.29275 of 2019 is filed for not laying the copies of the Annual Returns and financial statements on or before 30.09.2015 and violating Section 129 (2) punishable under Section 129 (7) of the Companies Act 2013. This offence is punishable with imprisonment for a term which may extend to one year or with a fine which shall not be less than Rs.50,000/- but it may extend to Rs.5,00,000/- or with both. Section 468



Cr.P.C. provides one year period of limitation for instituting criminal proceedings. The moment the copies of the Annual Returns and financial statements for the financial year 2014-15 was not filed on or before 30.09.2015, the cause of action for filing the complaint raises. The complaint ought to have been filed on or before 30.09.2016. However, in the case before hand, the complaint was filed only in 2017. Therefore, this Court is of the considered view that the case in E.O.C.C. No.630 of 2017 concerned in CrI.O.P.No.29275 of 2019 is barred by limitation and thus, liable to be quashed.

21.As already stated, it is submitted by the learned counsel for the petitioner that Section 92(5) section and 137(3) of the Companies Act 2013 had been decriminalized by Section 15 and 22 of the Companies Act 2019 respectively. A reading of the provisions show that under 2013 Act punishment with imprisonment for a term which may extend to six months or fine which shall not be less than Rs.50,000/- but which may extend to Rs.5,00,000/- or with both was provided under Section 92(5) of the Act. That was amended in 2019 Act as follows: "Penalty of Rs.50,000/- and in case of continuing offence, with a further penalty of Rs.100/- each day after the first during which such failure continues, subject to a maximum of Rs.5,00,000/-". Punishment of fine of Rs.1,000/- for every day during which the failure continues but which shall not be more than Rs.10,00,000/- was prescribed for the Company and punishment for a term which may extend to six months or with fine which shall not be less than Rs.1,00,000/- but which may extend to to Rs.5,00,000/- or with both was prescribed under Section 137(1) r/w 137 (3) of the 2013 Act. It is now amended as penalty of Rs.1,000/- for every day during which the failure continues but which shall not be more than Rs.10,00,000/- for the Company and the penalty of Rs.1,00,000/- and in case of continuing offence, with a further penalty of Rs.100/- each day after the first during which such failure continues subject to a maximum of Rs.5,00,000/- under 2019 Act. As rightly pointed out by the learned counsel for the petitioners, with a view to decriminalize some of the erstwhile offences penalty provision is made in the place of imprisonment and fine. In the judgment relied by the learned counsel for the petitioner reported in (1983) 1 SCC 177 T.Barai Vs. Henry Ah Hoe and another, it was held that when the Central Amendment Act provides for a reduced punishment, the accused must have the benefit of the reduced punishment. However, the fact of the matter is whether the ratio of the judgment can be applied to this case. In the judgment aforesaid, the issue was whether the State amendment or the subsequent Central amendment would prevail when dealing with the offence committed under Food Adulteration Act. The State amendment giving higher punishment and subsequent Central Amendment providing for lesser punishment and considering the



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position of law, the Hon'ble Supreme Court observed that the benefit of Central Amendment should be given to the accused, so that he may face the trial for lesser offence and the possibility of lesser punishment as amended by the Central Act. However, in the case before hand, 2013 Act provides for imprisonment or fine for the offences under Section 92(4) r/w 92 (5) and Section 137(1) r/w 137 (2). Now it is amended as penalty under Section 92(5) and 137(5) under 2019 Act. Criminal prosecution is launched in respect of cases imposable with a fine or imprisonment and there is an adjudicatory mechanism for adjudicating the cases involving imposition of penalty. In case of penalty, the case goes out of the Court and to the Adjudicating authority. We cannot now set the clock back asking the authority to initiate the penalty proceedings for the offences committed under 2013 Act. Thus, this Court is of the considered view that the petitioners cannot seek the aid of the aforestated judgment of the Hon'ble Supreme Court in support of their case. The trial proceedings has to go on in E.O.C.C.Nos.636 & 639 of 2017 concerned in Crl.O.P.Nos.29263 and 29264 of 2019. In this view of the matter, the prayer for quashing these petitions cannot be entertained and these petitions are dismissed.

22.The submissions of the learned counsel appearing for the petitioners in Crl.O.P. Nos. 29238 of 2019, 29241 of 2019, 29244 of 2019, 29246 of 2019, 29247 of 2019, 29249 of 2019, 29250 of 2019, 29252 of 2019, 29260 of 2019, 29268 of 2019, 29273 of 2019 and 29274 of 2019 is that all these cases have been instituted for the default/violations committed from the year 2011-12 to 2014-15 under the Companies Act 1956. The Companies Act 1956 was repealed and replaced by Companies Act 2013. Only the cases instituted and pending at the time of commencement of 2013 Act were saved by the 2013 Act. However, all theses cases have been instituted only in the year 2017 and therefore, they are not legally maintainable.

23.Section 465 of Companies Act 2013 deals with repeal of certain enactments and savings. As per this section, Companies Act 1956 and Registration of Companies Act, 1961 (Sikkim Act) were stood repealed. Section 465 (2) (i) saves " any prosecution initiated under the repeal enactments and pending immediately before the commencement of this Act before any Court, subject to the provisions of this Act, continue to be heard and disposed of by the said Court. This Section only saves the prosecution instituted under the repealed enactments i.e., under 1956 Act and pending immediately before the commencement of the 2013 Act. Companies Act 2013 was notified on 12.09.2013. Admittedly, all these aforestated cases had not been instituted and pending immediately before the commencement of 2013 Act. Thus, this Court finds merits in the submissions



of the learned counsel for the petitioners that the prosecution launched in the aforesaid cases under the repealed act cannot be maintained. It is observed in (2009) 2 SCC 1 Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India and others, as follows:

34.(f) If any Central Act is repealed, without making any provision for savings, the provisions contained in Section 6 of the General Clauses Act, 1897 will apply. But where the repealing Act itself contains specific provisions in regard to savings, the express or special provision in the repealing Act will apply. Section 6 of the General Clauses Act makes it clear that it will not apply when a different intention appears in the repealing statute. Where the provision relating to savings is excluded, the repeal will have the effect of complete obliteration of the statute.
.....

36.Parliament in its plenary power, can make an outright repeal which will not only destroy the effectiveness of the repealed Act in future, but also operate to destroy all existing inchoate rights and pending proceedings. This is because the effect of repealing a statute is to obliterate it completely from the record, except to the extent of savings. If Parliament specifically excludes any saving clause in a repealing Act, or severely abridges the provision for savings, which it has the power to do, the effect would be that after the repeal of the statute, no proceeding can continue, nor can any punishment be inflicted for violation of the statute during its currency.

24.The main submissions made by the learned counsel for the petitioner in Crl.O.P.No.28730 of 2019 is that the show cause notice was not given before filing the criminal proceedings. It was denied by the learned counsel for the respondent. Whether show cause notice was given to the petitioners before launching prosecution is a disputed fact and it can be decided only in the trial. Therefore, the petitioner cannot seek to quash the case in E.O.C.C. No.379 of 2018 concerned in this case.

25.In the result, the Crl.O.P.Nos. 29238 of 2019, 29241 of 2019, 29244 of 2019, 29246 of 2019, 29247 of 2019, 29249 of 2019, 29250 of 2019, 29252 of 2019, 29260 of 2019, 29268 of



2019, 29273 of 2019, 29274 of 2019 and 29275 of 2019 are allowed and Crl.O.P.Nos.28730 of 2019, 29263 of 2019, 29264 of 2019, 29265 of 2019 are dismissed. Consequently, connected miscellaneous petitions, if any, is also closed.

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Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sli

To

1.The Additional Chief Metropolitan
Magistrate Economic offences,
Egmore, Chennai - 8

2.The Public Prosecutor,
High Court, Madras.

+34ccs to Mr.V.Vijaya Kumar, Advocate SR.No.31858, 31835, 31855,
31851, 31852, 31853, 31841, 31839, 31857, 31856, 31859, 31836,
31834, 31840, 31837, 31838, 31854

+1cc to Mr.K.Ramanamoorthy, Advocate SR.No.31759

CRL.O.P.No.28730 of 2019 and batch

AD(CO)
GMV(29/06/2022)