IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NOS.28307, 28312, 28314, 28734, 28739, 28741, 28745, 28748, 29584 & 29572 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 in all Crl.O.P's

.Vs.

The Assistant Registrar of Companies,
Tamil Nadu,
Having office at Shastri Bhavan,
No.26, Haddows Road,
Chennai - 600 006. ... Respondent/Complainant in all Crl.O.P's

COMMON PRAYER:-

Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure, to call for the records in EOCC.Nos.429, 430, 428, 380, 381, 382, 386, 385, 384 & 383 of 2018 respectively 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.

IN ALL CRL.O.P'S

For Petitioners : Mr.T.R.Sivaram

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

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records in EOCC.Nos.429, 430, 428, 380, 381, 382, 386, 385, 384, 383 of 2018, respectively, on the file of the Additional Chief Metropolitan Magistrate Economic offences, Egmore, Chennai - 8 and quash the proceedings as an abuse of process of Law.

CRL.O.P.NO.28307 OF 2019:

E.O.C.C.No.429 of 2018 was filed under Section 137 (1) r/w Section 137 (3) of the Companies Act, 2013. The allegations made in the complaint is that a copy of the financial statement, consolidated financial statement, if any duly adopted for the year 2016-2017 should have been filed with the complainant within 30 days of the date of Annual General Meeting with such fees or additional fees as may be prescribed within the specified time. In this case, the copy of the financial statements have so far not been filed with the complainant despite issuance of the show cause notice dated 13.08.2018. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 137 (1) r/w Section 137 (3) of the Companies Act, 2013.

CRL.O.P.NO.28312 OF 2019:

E.O.C.C. No.430 of 2018 was filed under Section 92(4) r/w 92 (5) of the Companies Act, 2013. The allegations made in the complaint is that the copy of Annual Return for the year 2016-2017 should have been filed with the complainant within 60 days from the date of Annual General Meeting in terms of Section 92 (4) of the Act. In this case, the copy of the Annual Returns have so far not been filed with the complainant despite issuance of the show cause notice dated 13.08.2018. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 92(4) r/w 92 (5) of the Companies Act, 2013.

CRL.O.P.NO.28314 OF 2019:

E.O.C.C. No.428 of 2018 was filed under Section 129(2) r/w 129(7) of the Companies Act, 2013. The allegations made in the complaint is that the copy of financial statements for the year 2016-2017 ought to have been laid in the Annual General Meeting within the stipulated time on or before 30.09.2017 in accordance with Section 129(2) of the Act. In this case, the copy of the financial statements have so far not been filed despite issuance of the show cause notice dated 13.08.2018. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 129(2) r/w 129(7) of the Companies Act, 2013.

CRL.O.P.NO.28734 OF 2019:

E.O.C.C.No.380 of 2018 was filed under Section 129(2) r/w 129(7) of the Companies Act, 2013. The allegations made in the complaint is that the copy of financial statements for the year 2015-2016 ought to have been laid in the Annual General Meeting within the stipulated time on or before 30.09.2016 in accordance with Section 129(2) of the Act. In this case, the copy of the financial statements have so far not been filed despite issuance of the show cause notice dated 28.11.2017. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 129(2) r/w 129(7) of the Companies Act, 2013.

CRL.O.P.NO.28739 OF 2019:

E.O.C.C.No.381 of 2018 was filed under Section 96(1) punishable under Section 99 of the Indian Companies Act, 2013. The Annual General Meeting ought to have been held for the financial year ending 31.03.2016 on or before 30.09.2016. The accused have not conducted the Annual General Meeting for the financial year ending 31.03.2016, thus, violated the provisions under Section 96 (1) punishable under Section 99 of the Indian Companies Act, 2013.

CRL.O.P.NO.28741 OF 2019:

E.O.C.C.No.382 of 2018 was filed under Section 92(4) r/w 92 (5) of the Companies Act, 2013. The copy of Annual Return for the year 2015-16 should have been filed with the complainant within 60 days from the date of Annual General Meeting in terms of Section 92 (4) of the Act. The accused have not filed the Annual Return and thus, violated Section 92(4), punishable under Section 92(5) of the Indian Companies Act, 2013.

CRL.O.P.NO.28745 OF 2019:

E.O.C.C.No.386 of 2018 was filed under Section 92(4) r/w 92 (5) of the Companies Act, 2013. The allegations made in the complaint is that the copy of Annual Return for the year 2014-2015 should have been filed with the complainant within 60 days from the date of Annual General Meeting in terms of Section 92 (4) of the Act. In this case, the copy of the Annual Returns have so far not been filed with the complainant despite issuance of the show cause notice dated 28.11.2017. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 92(4) r/w 92 (5) of the Companies Act, 2013.

CRL.O.P.NO.28748 OF 2019:

E.O.C.C.No.385 of 2018 was filed under Section 96 (1) r/w 99 of the Companies Act, 2013. The Annual General Meeting ought to have been held for the financial year ending 31.03.2015 on or before 30.09.2015. The accused have not conducted the Annual General Meeting for the financial year ending 31.03.2015, thus, violated the provisions under Section 96 (1) punishable under Section 99 of the Indian Companies Act, 2013.

CRL.O.P.NO.29584 OF 2019:

E.O.C.C.No.384 of 2018 was filed under Section 129(2) r/w 129(7) of the Companies Act, 2013. The allegations made in the complaint is that the copy of financial statements for the year 2014-2015 ought to have been laid in the Annual General Meeting within the stipulated time on or before 30.09.2015 in accordance with Section 129 (2) of the Act. In this case, the copy of the financial statements have so far not been filed despite issuance of the show cause notice dated 28.11.2017. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 129(2) r/w 129(7) of the Companies Act, 2013.

CRL.O.P.NO.29572 OF 2019:

E.O.C.C.No.383 of 2018 was filed under Section 137(1) r/w 137(3) of the Companies Act, 2013. The allegations made in the complaint is that a copy of the financial statement, consolidated financial statement, if any duly adopted for the year 2014-2015 should have been filed with the complainant within 30 days of the date of Annual General Meeting with such fees or additional fees as may be prescribed within the specified time. In this case, the copy of the financial statements have so far not been filed with the complainant despite issuance of the show cause notice dated 28.11.2017. Therefore, the accused is liable to be prosecuted for not complying with the provisions under Section 137 (1) r/w Section 137 (3) of the Companies Act, 2013.

2. Challenging taking cognizance of these cases, the aforesaid criminal original petitions have been filed.

3. The main grounds on which these quash petitions have been filed, as seen from the submissions of the learned counsel for the petitioners is that, prior to launching the criminal prosecution, no show cause notice was given to the petitioners. Initiation of criminal proceedings without giving show cause notice is against the principles of natural justice. There is no mentioning in the complaint about issuance of show cause notice. There is also no proof filed to show issuance of show cause notice and its service on the petitioners. If show cause notice had been given, petitioners would have got the opportunity for rectifying their defects. When that opportunity is not given, criminal prosecution is liable to be quashed. There is no specific averment made in the complaint as to whether the Directors are responsible for the offences alleged to have committed by the Company. No speaking order was passed by the Additional Chief Metropolitan Magistrate at the time of taking cognizance of the cases. Thus, the learned counsel for the petitioners prayed for quashing the proceedings.

4. In response, the learned counsel for the respondent submitted that it is not mandatory to issue a statutory notice, however, show cause notice was issued before launching the prosecution. The offences are continuing offence. The Additional Chief Metropolitan Magistrate had taken the cases on file only after perusing the records and by applying the mind. These petitions are filed only to protract the proceedings without any semblance of merits. Thus, he prayed for dismissal of these petitions.

5. A reading of the complaint in these cases shows that it was specifically mentioned that show cause notice was issued on 13.08.2018/28.11.2017. In the list of documents, show cause notice is shown as document relied by the prosecution. It is true that the proof for service of the show cause notice on the petitioners is not produced. However, it is for the respondent during the trial to prove the service/non- service of the show

cause notice. When there is clear averments made in the complaint that the show cause notice was issued on 13.08.2018/ 28.11.2017, the contention of the learned counsel for the petitioners that no show cause notice was issued to the petitioners cannot be accepted.

6. The learned counsel for the petitioners relied on the order of this Court in W.P.Nos.6810, 6816, 6820, 6822, 6825 and 6829 of 2019 (Cognizant Technology Solutions Vs. 1.Assistant Registrar of Companies, Office of the Registrar of Companies, Tamil Nadu, Shastri Bhavan, II Floor, 26, Haddows Road, Chennai – 600 006. 2.Registrar of Companies of Tamil Nadu, Shastri Bhavan, 2nd Floor, B Wing, 26 Haddow Road, Chennai 600 006) in support of his submissions. These writ petitions have been filed for a limited relief seeking directions to the second respondent to consider their reply dated 03.01.2019 and pass necessary orders. It is seen from this order that for the notice issued by the respondent, a reply was sent and the petitioners wanted the reply to be considered before proceeding further. In the case before hand, the very allegations made in the complaint is that no show cause notice was sent at all, but the complaint shows that show cause notice was sent. Sending of show cause notice, its acceptance are disputed facts, this can be decided only during trial. Therefore, this Court is of the view that this judgment is not applicable to the facts of this case. Thus, this Court is of the considered view that the petitioners cannot seek to quash the proceedings on the allegations that no show cause notice was issued to the petitioners before launching the prosecution.

7. It is pleaded in the complaint that the first accused is the company and it is represented by the second and third accused, its Directors. The second and third accused, the Directors of the Company are the officers who are in default within the meaning of Section 2 (60) of the Act. Therefore, the contention of the learned counsel for the petitioners that there is no averment in the complaint with regard to the role of Directors and therefore, for that reasons the prosecution is liable to be quashed against the Directors cannot be accepted.

8. The offences alleged against the petitioners are statutory violations for non complying certain mandatory provisions. This Court can gather from the records summoned that the Additional Chief Metropolitan Magistrate had taken cognizance of the cases only after going through the complaint allegations and materials filed in support of the complaint allegations.

9. The overall analysis of the materials placed before this Court and submissions of the learned counsel appearing for the parties clearly show that these petitions have been filed only to protract the proceedings and deserve to be dismissed. Accordingly, these petitions are dismissed. Consequently, connected miscellaneous petitions, if any, are also closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

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To

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

2. The Assistant Registrar of Companies,
Shastri Bhavan,
No.26, Haddows Road,
Chennai – 600 006.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Ramanamoorthy, Advocate, S.R.No.31760

CRL.O.P.NO.28307 OF 2019
AND BATCH

AJS(CO)
PBS/30/06/2022