BAIL SLIP

The Appellant namely K.Padmanabhan, S/o.Krishnamurthy accused in E.O.C.No.63 of 2008 dated 29/07/2013 on the file of Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai was directed to be released on bail as per order of this Court dated 12.04.2017 and made in Crl.M.P.No.5151 of 2017 in CRL.R.C.No.581 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.04.2022

PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.581 OF 2017

K.Padmanabhan

... Petitioner/Accused

Vs.

The Assistant Registrar of Companies
Having its Registrar office
at Shastri Bhavan,
Chennai-600 006.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the judgment of the Courts below convicting the petitioner and the consequential sentence imposed on the petitioner and justice to be rendered.

For Petitioner : Mr.H.Karthik Seshadri for M/s.Iyer & Thomas

For Respondent : Mr.B.Sudhir Kumar, Senior Central Government Standing Counsel

ORDER

The petitioner was convicted by the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai (trial Court), vide judgment in E.O.C.C.No.63 of 2008, dated 29.07.2013 and sentenced to undergo Rigorous Imprisonment for one year for offence under Section 68A(1) of the Companies Act, 1956. Aggrieved against the judgment of the trial Court, an appeal was filed by the petitioner before the learned Principal Sessions Judge, Chennai (lower appellate Court) in C.A.No.158 of 2013. The lower appellate Court, by judgment, dated 23.03.2017 dismissed the appeal confirming the judgment of the trial Court. As against the same, the present Criminal Revision has been filed.

2.Gist of the case is that M/s.Teledata Informatics Limited (hereinafter called as 'the company') was incorporated under the Companies Act, 1956 (hereinafter called as 'Act') and having its registered office at 2AB, Gee Gee Emerald, 151 Village Road, Nungambakkam, Chennai. The petitioner/accused is the Managing Director of the company at relevant time. An inspection was conducted in the company under Section 209A of the Act. During the course of inspection of the records of the company, the Inspecting Officer/PW2 noticed that Shri Venkatachalapathy is holding 1,76,670 shares in the company, the details of which are as follows:-

- On 04.02.1998, 6,160 shares bearing distinctive numbers from 686256 to 692415 are transferred from R.Gopaljee.

- On 04.02.1998, 10,900 shares bearing distinctive numbers from 1396709 to 1404608 are transferred from N.Padmanabhan.

- On 04.02.1998, 2,570 shares bearing distinctive numbers from 433516 to 436085 are transferred from Gayathri Padmanabhan.

- On 20.03.2000, 39,260 shares bearing distinctive numbers from 1487651 to 1526290 by allotment of bonus shares.

- On 05.03.2004, 1,17,780 shares bearing distinctive numbers from 1000220 to 10119980 by allotment of right shares.

3.The address of Shri Venkatachalapathy is given as 110, Ramakrishna Mutt Road, Chennai, which is the address of the petitioner, the Managing Director of the company. During inspection, it was also found that the dividends in respect of the shares held in the name of Shri Venkatachalapathy, which are as follows:-

Years	Dividend Paid
2000-2001	Rs.29,945/-
2001-2002	Rs.64,779/-
2003-2004	Rs.41,223/- and
2004-2005	Rs.65,005/-
Total	Rs.2,00,952/-

4.Hence, it was found that there is no such person by name Shri Venkatachalapathy and the above shares are held only by the petitioner, Managing Director of the company. It was also noticed during inspection that no return as required under Section 187C of the Act has been filed to the respondent. Therefore, the company has violated the provisions of Section 68A of the Act as 1,76,670 shares are held in fictitious name.

5.Based on the inspection report, the Regional Director, Ministry of Corporate Affairs sent a letter, dated 22.12.2006/Ex.P1 to the respondent and instructed the respondent to file a complaint against the concerned official of the company. On receipt of the same, the respondent issued a show cause notice, dated 09.02.2007/Ex.P2 to the petitioner. Since the reply/Ex.P3 was not satisfactory, the respondent filed a complaint before the trial Court.

6.During trial, on the side of the prosecution two witnesses were examined as PW1 & PW2 and five documents were marked as Exs.P1 to P5. On the side of the defence, one witness Mr.N.Ramanathan, Secretary of the company was examined and Exs.D1 & D2 were marked. On conclusion of trial, the trial convicted the petitioner as stated above and the same was confirmed by the lower appellate Court, by judgment, dated 23.03.2017 in C.A.No.158 of 2013.

7.The learned counsel for the petitioner submitted that the respondent initiated the prosecution against the petitioner in respect of some transaction which had taken place in the year 1998. The Courts below completely failed to notice that the company in respect of these transactions had taken place viz., M/s.Teledate Informatics Limited itself is wound up. He further submitted that the petitioner acted bonafide and purchased shares in the name of deity Shri Venkatachalapathy. On 20.03.2000, bonus shares were issued corresponding to 39,260 shares for the shares so purchased and on 05.03.2004, shares were issued on Rights basis to the extent of 1,17,780 shares. The transferor of these shares had received full consideration and no quarrel in this regard. Right shares were paid by the petitioner on behalf of the deity Shri Venkatachalapathy in the year 2004. The learned counsel further submitted that the respondent conducted inspection under Section 209A of the Companies Act, 1956 between 04.05.2006 and 13.06.2006, noticed the violation of Section 68A of the Act. Thereafter, the show cause notice/Ex.P2 was issued on 09.02.2007, which was replied suitably on 20.03.2007. Not satisfied with the reply/Ex.P3, the complaint was filed against the petitioner. In the complaint, there is no mention about the contents of the show cause notice or reply given by the petitioner, for what reason, the same rejected is not known, it is sine quo non, a requirement to be reflected in the complaint.

8.The learned counsel further submitted that the idols are all juristic entities and Shri Venkatachalapathy is the deity worshipped by the petitioner. The shares were held in the name of Shri Venkatachalapathy and in the name of the petitioner. In this case, the evidence of PW1 is that he launched the prosecution based on the inspection carried out by PW2, the Inspecting Officer. PW1 stated that he collected the documents alone from PW2 and he was not conversant with the documents and the facts of the case. PW2 admitted that he not called for the share certificate for examination. The learned counsel further submitted that merely because the address of Shri Venkatachalapathy and the petitioner are one and same, the respondent wrongly concluded that Shri Venkatachalapathy was a fictitious person. It is also not in dispute that the payments for the shares were made by the petitioner. PW2 admitted that he has not served the copy of the inspection report to the petitioner, which is the foundational basis for launching the prosecution. PW2 admitted that in the name of God, an account can be opened and maintained and there is no legal bar to purchase the shares jointly in the name of the god and in the name of a person. Once such admission is made, the trial Court ought to have rejected the complaint on the ground that it is the admission of the Inspecting Officer/PW2 that the purchase of shares in the name of God is legal and permissible. Atmost, it can be said that as per Section 187C of the Act, if the declaration is failed to be made within stipulated time and without any reasonable excuse, he shall be punishable with fine of Rs.1,000/- for everyday during which the failure continues. After insertion of Section 55A of the Act with effect from 13.02.2000, the powers of the Registrar of Companies to proceed for offence under Section 68A of the Act is ousted and it is only the SEBI to initiate a complaint under the provisions of the Act.

9.The learned counsel further submitted that as per Section 621 of the Act, any cognizance under this Act can be taken on a complaint filed by the Registrar, Shareholder or Government. Section 2(40) of the Act states that " Registrar" means a Registrar, or an Additional, a Joint, a Deputy or an Assistant Registrar, having the duty of registering companies under this Act. In this case, PW1 is only an Assistant in the office of the Registrar of Companies, hence, he has no authority to file the complaint and prosecute the petitioner, which was not considered by the Courts below. The petitioner examined the Secretary of the company as DW1, who clearly deposed that the shares were jointly standing in the name of Shri Venkatachalapathy and in the name of the petitioner. He also clarified that the petitioner is a devotee of Lord Venkatachalapathy, to give respect to Lord Venkatachalapathy, the shares are allowed to be in the name of Lord Venkatachalapathy and the petitioner. Neither the petitioner has any intention to cheat anybody nor violated the provisions of the Act. DW1's evidence stands starring against the prosecution and the same was not seriously challenged and questioned by the prosecution during trial. Further, the trial Court as well as the lower appellate Court failed to consider the evidence of DW1 and convicted the petitioner. Hence, he prayed for acquittal.

10.In support of his submissions, the learned counsel for the petitioner relied on the decision in the case of “Bishwanath and another Versus Sri Thakur Radha Ballabhji and others reported in AIR 1967 SC 1044” for the preposition that the idol of a Hindu temple is a juridical person in whose name the properties can be purchased. He further placed reliance on the decision of the Delhi High Court in the case of “Kimsuk Krishna Sinha Versus Securities of Exchange Board of India & Ors., reported in 2010 SCC OnLine Del 1448” and decision of the Hon'ble Apex Court in the case of “Sahara India Real Estate Corporation Limited and others Versus Securities and Exchange Board of India and another reported in (2013) 1 SCC” for the preposition that as per Section 55A of the Act, the prosecution to be launched only by SEBI for any violation of Section 68A of the Act.

11.Mr.B.Sudhir Kumar, Central Government Standing Counsel appearing for the respondent submitted that the Inspecting Officer/PW2 inspected the company under Section 209A of the Act. During the course of the inspection of the records of the company, it was found that 1,76,670 shares of the company were in the name of the Shri Venkatachalapathy and the address given is that of the petitioner, the Managing Director of the company. Hence, it was confirmed that no person in the name of Venkatachalapathy and the petitioner impersonated in the name of Shri Venkatachalapathy and thereby, violated the provisions of

Section 68A of the Act. He further submitted that initially, a letter, dated 22.06.2006/Ex.P4 was issued to the company pointing out the violations, for which, the petitioner sent a reply/Ex.P5, thereafter, a show cause notice, dated 09.02.2007/Ex.P2 was issued, for which, the petitioner sent a reply/Ex.P3, dated 20.03.2007. Since the reply/Ex.P3 was not acceptable, the prosecution wa launched. During trial, PW1 and PW2 were examined and Exs.P1 to P5 were marked. PW1 is the Assistant of the respondent office, PW2 is the Inspecting Officer, who conducted inspection from 04.05.2006 to 13.06.2006 and found in the name of Shri Venkatachalapathy 1,76,670 shares were allotted and also found that for the period 2000-2001, 2001-2002, 2003-2004 and 2004-2005, the petitioner received dividends and no return as contemplated under Section 187C of the Act was filed. He further submitted that the Secretary of the company was examined as DW1. DW1 except for stating that the shares were jointly standing in the name of Lord Venkatachalapathy and the petitioner, he has not stated anything more. PW2 submitted that he was not called for the share certificate and not verified the same. The trial Court in its judgment discussed the contention of the learned counsel for the petitioner as well as the respondent. The lower appellate Court finding that the petitioner not complied with the requirement of Section 187C of Act and thereby, violated the provisions of Section 68A of the Act, confirmed the judgment of the trial Court.

12.The learned counsel further submitted that had it been in the name of the God as contented by the petitioner, it should have been referred to Lord Venkatachalapathy and not Shri Venkatachalapathy. It is for his convenience, the name of Venkatachalapathy has been used by the petitioner. With regard to the contention of the petitioner that the complaint was not filed by the Registrar, the lower appellate Court had given a finding that the Registrar includes Assistant Registrar. Likewise for the contention of the petitioner that as per Section 55A of the Act, it is the SEBI to initiate the complaint under Section 68A of the Act, the lower appellate Court gave a finding that the issue is related to holding of shares in the name of fictitious person and therefore, the respondent has ample authority to file the complaint against the petitioner. Thus, the points raised by the learned counsel for the petitioner herein are answered by the Court below, hence, he prayed for dismissal of the Criminal Revision.

13.This Court considered the rival submissions and perused the materials available on record.

14.The primary contention of the petitioner is that in reverence, the petitioner was holding the shares along with Shri Venkatachalapathy. He is an harden devotee of Lord Ventatachalapathy. It is an acceptable norm that the properties purchased in the name of God for sentimental reasons. DW1, the Secretary of the company in his evidence stated that the shares have been held jointly in the name of Lord Venkatachalapathy and in the name of the petitioner. This has not been disputed by way of cross examination by the respondent. The entire case rest on the inspection conducted under Section 209A of the Act by PW2 during the period from 04.05.2006 to 13.06.2006. It is admitted by PW2 that he only sent a letter/Ex.P4 after the inspection. He further admitted that in the name of the God, an account can be opened maintained, shares can be purchased and there is no legal bar to purchase the share jointly in the name of God and in the name of a person. PW2 further admitted that he was not furnished with the inspection report, which is the basis of the entire proceedings. PW2 admitted that he had not called and failed to verify the physical share certificate of the company.

15.It is not in dispute that the payments for the shares were made by the petitioner. It is also not in dispute that the shares were in the name of the Shri Venkatachalapathy and the petitioner jointly. Had the petitioner had any intention, he would not have given his own address for Lord Venkatachalapathy. PW2 admitted that Shri Venkatachalapathy and the petitioner are joint shareholders of the shares and the application was made and signed by the petitioner giving his own address. The petitioner in his reply/Ex.P5 categorically stated that he is the second holder along with Lord Venkatachalapathy/first holder. Thus, the trial Court found fault for the petitioner not filing the appropriate returns under Section 187C of the Act disclosing these facts within the stipulated period. It is seen that PW1 merely filed the complaint and nothing more. It is also seen that the show cause notice, its reply, whether it was considered or not, nothing is available in the complaint, which is improper. Had the petitioner referred to Shri Venkatachalapathy as Lord Venkatachalapathy, the above issue would not arise. The petitioner had filled up and signed the application form, paid for the shares in the first name of Shri Venkatachalapathy and the second name for himself and the address given is that of the petitioner, which clearly discloses that there is no other intention for the petitioner to commit any impersonation for acquisition and no intention for the petitioner to acquire shares in fictitious name. Hence, there is no evasion or enrichment.

16.In view of the above, the petitioner ought not to be prosecuted for offence under Section 68A of the Act. The petitioner ought to have filed the declaration under Section 187C of the Act within the prescribed period. For non filing of declaration, only penalty can be imposed and nothing more. As per Section 55A of the Act, the SEBI authorities would be a right authority to initiate prosecution for offence under Section 68A of the Act relating to issuance and transfer of securities and non payment of dividends.

17.On the above facts and circumstances and available evidence, this Court is inclined to allow this revision. Hence, the judgments of the Courts below are liable to be set aside and, are set aside and the petitioner is acquitted from all the charges. In the result, this Criminal Revision Case is allowed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
   Chennai.

2. The Additional Chief Metropolitan Magistrate,
   E.O.I, Egmore, Chennai.

3. The Assistant Registrar of Companies,
   Office at Shastri Bhavan,
   Chennai-600 006.

+2ccs to Mr.H.Karthik Seshadri, Advocate, S.R.No.31920

+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.31887

Crl.R.C.No.581 of 2017

SSI(CO)
RLP(10/06/2022)