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CrI.O.P.Nos.14587, 14596, 14597, 14603, 14605, 14610, 14611 & 14619 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.Nos.14587, 14596, 14597, 14603, 14605, 14610, 14611 & 14619
of 2019
and
CrI.M.P.Nos.7053, 7062, 7066, 7050, 7059, 7052, 7061 & 7057 of 2019

[CrI.OP.No.145847 of 2019]

1.M/s.Sri Matha Spinning Mills Private Limited,
Rep. by its Managing Director,
Smt. Kandaswamy Indira
Registered Office at:
207, Mangalam Road, Karuvampalayam,
Tirupur – 641604, Coimbatore District.

2.Smt. Kandaswamy Indira
3.Shri Kandaswamy Sivaraj
4.Smt.Veluswamy Dhanalakshmi
5.Shri Veluswamy Pallipalayam Sennimalai Gounder
6.Shri Chennimalai Gounder Kandasamy

... Petitioners

Vs.

The Registrar of Companies
Tamilnadu - Coimbatore,
Rep. by Addl. Standing Counsel, Govt. of India,
No.7, AGT Business Park,
Phase II, I Floor Civil Aerodrome Post,
Avinashi Road, Peelamedu,
Coimbatore - 641014.

... Respondent



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PRAYER :- Criminal Original Petitions are filed under Section 482 of the Criminal Procedure Code to call for the records in the complaint filed by the respondent in Spl.CC.Nos.44 of 2019 on the file of the I Additional District and Sessions Judge, Coimbatore and quash the same as against the petitioners herein.

For Petitioner : M/s.M.Vijaya Mehanath

For Respondent : M/s.S.Janarthanam, Senior Panel
Central Govt.Counsel.

COMMON ORDER

These petitions are to quash the complaint filed for the offences under Section 135 read with Section 134(3)(o) of the Companies Act, 2013 (herein after referred to as 'the Act' for the sake of convenience). The said violation is punishable under Section 134(8) of the Act.

2. It is alleged in the complaint that the company had not disclosed the composition of the CSR Committee and the details of CSR Policies for the financial years 2014-15 and 2015-16.



3. Though the learned counsel for the petitioners canvassed several points on merits, he ultimately confined himself to one submission. He submitted that Section 134(8) of the Act which prescribed the punishment of fine and punishment of imprisonment in certain cases has now been amended. The relevant amendment is as follows:-

26. In section 134 of the principal Act, for sub-section (8), the following sub-section shall be substituted, namely:—

"(8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees."

In view of the amendment which is beneficial to the accused, the learned counsel submitted that the violation is no longer an offence and the penalty has to be determined by the adjudicating authority. The learned counsel relied upon the judgment of this Court in **CrI.OP.No.30374 of 2019 dated 06.04.2023** where, under similar circumstances, this Court had observed that for violation of Sections 92(5) and 137(3) of the Act, which only attract a penalty and the prosecution has to be transferred to the adjudicating authority appointed under the Act pursuant to the amendment in the Act.



4. The learned Senior Panel Central Govt. Counsel for the respondent submitted that it is true that there is an amendment which modified the punishment prescribed for the offences alleged in the impugned complaints. He has also filed counters justifying the complaints filed by the respondent.

5. This Court is of the view that the points raised by the petitioners on the merits of the complaint cannot be adjudicated in these quash petitions. However, in view of the Amendment the violation is liable to pay penalty. The violation is no longer an offence. The prosecutions hence have to be transferred to the adjudicating authority appointed under the Act. The observations of this Court in ***Crl.OP.No.30374 of 2019 dated 06.04.2023*** and the judgement reported in ***2023(1) LW.Crl. 71 - D.Kannan Vs. The Deputy Registrar of Companies***, would squarely apply to the facts of this Case. The relevant observations are extracted hereunder for better understating.

7. In this case, the complaint is of the year 2017. The law as stood on the date of complaint for the alleged violation committed by the petitioner is as follows:

“(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may



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extend to twenty-five thousand rupees for every day after the first during which the contravention continues.”

8. At the relevant point of time, contravention was considered as an offence. Further, there was no Explanation II, which specifically clarified for the purpose of reckoning in the limit of Directorship of the 20 companies, the dormant companies shall not be included. By virtue of the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act 2020, the contravention is now liable for penalty by the adjudicating officer appointed by the Central Government. If the contravention is liable for fine, it is triable by a Magistrate and it is an offence and therefore, triable by a Magistrate. Penalty, however, is imposed by the adjudicating officer by the Central Government and hence, the contravention is no longer an offence. The Act not only mollifies the punishment prescribed for contravention, but also the procedure, for determining the penalty.”

6. The amendment in the instant case took place with effect from 21.12.2020. This amendment would apply to the pending prosecutions as well. Hence, the impugned complaints are transferred to the adjudicating authority appointed under the Act to adjudicate the contravention committed by the petitioners in terms of Section 134(3) read with Section 135 of the Act, punishable under Section 134 (8) of the said Act.



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7. With the above observations, the Criminal Original Petitions are disposed of. Consequently, connected Criminal Miscellaneous Petitions are closed.

19.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To,

The I Additional District and Sessions Judge,
Coimbatore.



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SUNDER MOHAN. J.

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