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Crl.O.P.No.22334 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.22334 of 2021

and

Crl.M.P.Nos.12120 & 12121 of 2021

Balvinder Bajwa

... Petitioner / Accused

-Vs-

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

... Respondent / Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in E.O.C.C.No.464 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai and to quash the same.

For Petitioner : Ms. Deepika Murali

For Respondent : Mr. S. Janarthanam, SPC



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in E.O.C.C.No.464 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai, filed for the alleged offences under Section 165 read with 165(6) of the Companies Act, 2013.

2.It is alleged in the complaint that the petitioner had held office as a Director in 96 Companies which exceeded the limit prescribed in Sub-Section (1) of Section 165(3) of the Companies Act, 2013; and hence guilty of the offence under Section 165 of the Companies Act, 2013.

3.The learned counsel for the petitioner would submit that the petitioner was prosecuted for the very same offence by the Registrar of Companies, New Delhi. The petitioner had already faced trial in C.C.No.532990 of 2016 on the file of the Additional Chief Metropolitan Magistrate (Spl. Acts), Central, Tis Hazari Courts, Delhi and was acquitted by judgment dated 28.02.2019; that the Registrar of Companies had not challenged the said judgment and that had become final. In



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respect of the same set of facts the impugned complaint has been filed, which is barred and would amount to double jeopardy. The learned counsel for the petitioner further submitted that in any case the offence is not made out, and the petitioner had complied with the provisions of the Companies Act by resigning from the companies before the date, by which he ought to have resigned viz., before 01.04.2015, and the resignation had become effective, since he had despatched the letters to the company on 22.08.2014. The learned counsel further submitted that this fact also been recorded in the judgment rendered by the Additional Chief Metropolitan Magistrate in C.C.No.532990 of 2016.

4.The learned Senior Panel Counsel for the respondent would submit that the records of the respondent show that the petitioner was the Director of 96 companies. The companies concerned did not inform the Registrar about the petitioner's resignation from their companies. Even if the companies had not informed the same, the respondent ought to have informed the Registrar of Companies as per Rule 16 of the Companies Appointment Qualification of Directors Rules 2014. Since the petitioner had not informed the respondent, the petitioner has to raise all the points



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before the trial Court and prayed for dismissal of the quash petition. The

learned Senior Panel Counsel, however fairly admitted that the prosecution by the Registrar of Companies, New Delhi, ended in acquittal in C.C.No. 532990 of 2016 on the file of the Additional Chief Metropolitan Magistrate (Spl. Acts), New Delhi.

5.This Court is of the view that the impugned complaint is liable to be quashed on the ground that there cannot be two complaints on the same set of facts; one by the Registrar of Companies, New Delhi and other by the respondent herein. The petitioner was tried and acquitted for the same violation before the of the Additional Chief Metropolitan Magistrate (Spl. Acts), New Delhi in C.C.No.532990 of 2016 and the impugned prosecution is therefore liable to be quashed on the ground that it suffers from double jeopardy.

6.That apart this Court on facts also finds that the petitioner had informed the companies concerned about the resignation and the same is despatched on 22.08.2014 within the time provided under the amended Act, which provided for an option to resign from the companies if the



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number of directorship exceeded the limit. This fact has also been recorded in the judgment of the of the Additional Chief Metropolitan Magistrate (Spl. Acts), Central, New Delhi in C.C.No.532990 of 2016. It is also the fact that the Registrar of Companies, New Delhi, has not challenged the said judgment and that has become final.

7.In view of the same, the impugned proceedings in E.O.C.C.No.464 of 2017 on the file of the Chief Metropolitan Magistrate, Economic Offences, Egmore, Chennai, is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

26.06.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order



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To,
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1.The Deputy Registrar of Companies,
Tamil Nadu,
Having office at Shastri Bhavan,
26, Haddows Road,
Chennai – 600 006.

2.The Chief Metropolitan Magistrate,
Economic offence, Egmore, Chennai.

3.The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
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