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Crl.O.P.Nos.24403, 24404, 24406,
& 24409 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.24403, 24404, 24406 & 24409 of 2019

and

Crl.M.P.Nos.12934, 12925, 12927 & 12932 of 2019

ANL.Madhavan
Crl.O.P's

... Petitioner in all

Vs.

Registrar of Companies (Roc)
Shastri Bahavan II floor, Block V&VI
26, Haddows Road
Chennai-600006.

.... Respondent in all Crl.O.P's

Prayer in Crl.O.P.No.24403 of 2019:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records on the file of Additional Chief Metropolitan Magistrate (EO)-I Egmore, Chennai 600008 in EOCC No.91/2019 and quash the same as illegal and in without jurisdiction in so far as the petitioner is concerned.



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Prayer in Crl.O.P.No.24404 of 2019:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records on the file of Additional Chief Metropolitan Magistrate (EO)-I Egmore, Chennai 600008 in EOCC No.89/2019 and quash the same as illegal and in without jurisdiction in so far as the petitioner is concerned.

Prayer in Crl.O.P.No.24406 of 2019:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records on the file of Additional Chief Metropolitan Magistrate (EO)-I Egmore, Chennai 600008 in EOCC No.90/2019 and quash the same as illegal and in without jurisdiction in so far as the petitioner is concerned.

Prayer in Crl.O.P.No.24409 of 2019:- Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records on the file of Additional Chief Metropolitan Magistrate (EO)-I Egmore, Chennai 600008 in EOCC No.88/2019 and quash the same as illegal and in without jurisdiction in so far as the petitioner is concerned.

In all Crl.O.Ps

For Petitioner : Ms.V.Srimathi

For Respondent : Mr.D.Simon
Central Government Standing Counsel



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COMMON ORDER

These Criminal Original petitions have been filed to quash the proceedings initiated by the respondent for the contravention of certain provisions under the Companies Act.

2. The respondent initiated proceedings for the following contraventions:

a) that the company had not filed form MGT-14 with the register for alteration of Articles of Association in the AGM held on 02.04.2014 and 30.09.2014, as required under section 117(1) of the Companies Act 2013. Likewise notice was issued under section 159 as

b) the company had invested in equity a sum of Rs.1,99,62,549 and the value of investment affects the true and fair value of statement of affairs of the company and charge had been made as if section 129 had been violated

c) the company does not have appointed whole time company



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secretary within 6 months of its vacancy as the company secretary had registered on 14.09.2017, thereby violating section 203 of Companies Act 2013

d) that the company had increased the authorised capital from 70 crores to 100 crores and had not filed SH-7, thereby violating section 64(14)(a) of the Act.

e) that the company had granted loan to 3 wholly owned subsidiaries in the form of investment without any schedule of the repayment of loan thereby violating section 196(7) of the Act. That the company had made a non current investment in excess of the limit laid down in section 186(2). That the company should have a Chief Financial Officer and it did not have any such offices with effect from 02.04.2014 which is violative of section 203 of the Act.

f) that the manager had resigned on 31.08.2016 and so for the company had not appointed a Managing Director or Chief executive officer, thus violating section 203(4) of the Act.



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3. After inspection of the above irregularities found against the accused persons, a show cause notice was issued. On receipt of the same, petitioner has replied that he had ceased to be a Director from the Board of the company since 2015 onwards and his directorship was notified as “disqualified” as contemplated under Section 167(1)(b) of the Companies Act, 2013 as per Board Resolution. That apart, it is also revealed that, as per the meeting held on 03.02.2016, recorded the vacation of the petitioner, from his office of Director (Non Executive Non Independent) pursuant to Section 167(1) (b) of the Companies Act, 2013. Therefore, petitioner had been ceased to be a Director of the Company. Further, he had already ceased to be a Director to the Board of Company since 2015 onwards as per the letter of resignation submitted to the Company. His vacation and cessation of Directorship in the Company was subsequently notified by the company SEBI as contemplated under section 167(1) (b) of the Companies Act, 2013 as per the code resolution. Even then, the respondent proceeded with the prosecution against the petitioner.

4. On perusal of the counter filed by the respondent and from the



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submissions made by the Mr.D. Simon, learned Central Government Standing Counsel revealed that, prior to the Companies Amendment Act 2015, it is mandatory to file a copy of his resignation along with detailed reason of his resignation to the Registrar by filing Form DIR – 11 within 30 days from the date of resignation as per the provision contemplated under Section 168(1) read with Rule 16 of the Companies (Appointment and Qualification of Directors) Rules, 2014. However, petitioner had filed the said Form on 31.01.2019, Therefore, it is clear that, though petitioner had resigned on 07.10.2015, to file DIR-11 only after receipt of the show cause notice, which was an afterthought. The respondent initiated proceedings for non-compliance of Section 134(5)(a) of the Companies Act, 2013.

5. The perusal of the proceedings initiated as against the petitioner though, the petitioner has been implicated as a accused, no specific averments were made as against the petitioner. In order to attract the offences to prosecute the petitioner, who is being a non-executive Director of the company, what is required is that the persons who are sought to be made *vicariously liable* for a criminal offence, at the time of offence was



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committed by the Company, was in charge of, and was responsible to the Company for the conduct of the business of the Company. Every person connected with the Company shall not fall within the ambit of the provision. Only those persons who were in charge of and responsible for the conduct of the business of the company at the time of an offence will be liable for criminal action. It follows from the fact that, if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable for the prosecution for the contraventions committed by the company.

6. On perusal of the reply submitted by the petitioner for the show cause notice, he categorically stated that, he had been ceased to be Director since he already submitted his resignation. That apart, as stated *supra*, respondent failed to state the role played by the petitioner, where he had participated in the day to activities of the company or not. Therefore, this Court is of the view that the proceedings initiated as against the petitioner in EOCC Nos.91, 89, 90, 88 of 2019 cannot be sustained and it is liable to be quashed.



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7. Accordingly, the Criminal Original Petitions are allowed. The proceedings in EOCC Nos.91, 89, 90, 88 of 2019 on the file of the Additional Chief Metropolitan Magistrate (EO)-I Egmore, are hereby quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed. No costs.

12.10.2023

Internet:Yes
Index:Yes/No
dpa/sma

To

The Registrar of Companies (Roc)
Shastri Bahavan II floor, Block V&VI
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