IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

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

Crl.O.P.No.29995 of 2019 and
Crl.M.P.Nos.16193 & 16194 of 2019

Meenatchi Sundaram ... Petitioner

-Vs-

Assistant Registrar of Companies,
Shastri Bhavan, Haddows Road,
Chennai-600 006. ... Respondent

**PRAYER**: Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to call for the record in C.C.264 of 2005 on the file of the learned Additional Chief Metropolitan Magistrate Court EO-II, Chennai and quash the same.

For Petitioner : Mr.B.Natarajan

For Respondent : Mr.K.Ramamoorthy

**ORDER**

This Criminal Original Petition is filed to quash the proceedings in C.C.No.264 of 2005 on the file of the learned Additional Chief Metropolitan Magistrate Court EO-II, Chennai taken cognizance for the offences under Section 207 of the Companies Act, 1956.

2. The respondent filed a complaint alleging that the 1st accused company was inspected under section 209(A) of the Companies Act and noticed that the company had declared 5% of dividend during the year ending 30.06.1997 amounting of Rs.22,50,000/- payable with effect from 26.12.1997. However the company had not made any provision towards 10% dividend tax on the dividend declared and has not remitted the said amount to the Income Tax Department in terms of Income Tax Act 1961. The company is failed to complied with the provisions under section 207 of the Act for the years 30.06.1996 and 30.06.1997. Hence the officers of the company have violated the provisions of Section 207 of the Act. The Trial Court taken cognizance in E.O.C.C.No.264 of 2005.

3. The learned counsel for the petitioner submitted that the petitioner is arrayed as 4th accused, he is not liable for any contravention under section 207 of the Act, since the petitioner had resigned the office of the Director with effect from 21.11.1997. The Annual General body Meeting held on 26.12.1997 and thereafter, as per section 207 of the Act, where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted, within thirty days, from the date of declaration, to any shareholder entitled to payment of the dividend, every Director of the Company shall, if he

is knowingly a party to the default, be punishable. Therefore at the time of declaring dividend, the petitioner was not the Director and his company also filed a Form 32 before the Registrar of Companies.

4. On perusal of the counter filed by the accused revealed that this petitioner is arrayed as 4th accused. While conducting inspection found that the accused company had declared 5% dividend during the year ending 30.06.1997 amounting of Rs.22,50,000/- payable with effect from 26.12.1997. However the 1st accused company has failed to make any provision towards 10% dividend tax on the dividend declared and has not remitted the said amount to the Income Tax Department in the terms of Income Tax Act 1961. The 1st accused company had also failed to comply with the provisions under Section 207 of Companies Act 1956 for the financial years ending 30.06.1996 and 30.06.1997. As per inspection report, the 1st accused company had admitted that the provision for dividend tax was not made for the financial year 1996-1997. As far as the petitioner is concerned, the 1st accused company had filed E-Form 32 on 20.02.1997 when the same was approved by the respondent only on 04.02.1998. Even assuming that the petitioner had resigned from his Directorship from 21.11.1997, the Annual General body Meeting held in the year 1996 and thereby declared 5% dividend during the year ending

30.06.1997 amounting of Rs.22,50,000/-. However the petitioner and his company failed to comply with the provision under section 207 of Companies Act. When the Annual General body meeting held, this petitioner Acted as Director of the company and as such he is liable to be punishable as per the complaint alleged by the respondent. Hence this Court could not find any ground to quash the proceedings.

5. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

10.11.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
gvn

To

1) The Additional Chief Metropolitan Magistrate Court EO-II,
Chennai

2) Assistant Registrar of Companies,
Shastri Bhavan, Haddows Road,
Chennai-600 006.

**G.K.ILANTHIRAIYAN, J.**

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