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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.Nos.31467, 31470 & 31472 of 2019
and Crl.M.P.Nos.17211, 17214, 17215, 18664, 18666 & 18667 of 2019**

1.M/s.Binny Limited
A Limited Company incorporated
under the Companies Act, 1956,
No.1, Cooks Road, Otteri,
Perambur, Chennai – 600 012.

2.Sri.Nandagopal Arvind

3.Sri.Srinivasan Natrajan

4.Sri.Sankara Mudaliar Jagadeesan

5.Thangavel Krishnamoorthy

...Petitioners in all Crl.O.Ps

Versus

The Assistant Registrar of Companies,
Tamil Nadu
Chennai having office at
Shastri Bhavan, 6, Haddows Road,
Chennai – 600 006.

...Respondent in all Crl.O.Ps



Common Prayer:

These Criminal Original Petitions are filed under Section 482 of Cr.P.C praying to call for the records relating to E.O.C.C.Nos.68, 70 & 69 of 2019 on the file of the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8 and quash the same.

For Petitioners

in all Crl.O.Ps : Mr.Salai Varun

For Respondent

in all Crl.O.Ps : Mr.D.Simon
Central Govt. Standing Counsel

COMMON ORDER

Since the parties in all these criminal original petitions are one and the same and also, the facts of these petitions are identical, all these criminal original petitions have been taken up together and disposed of by this common order.

2. These criminal original petitions have been filed by the petitioners seeking to quash the complaint in E.O.C.C.Nos.68, 70 & 69 of 2019 on the file of the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8.



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3. The learned counsel for the petitioners submitted that the respondent/de-facto complainant had filed the complaints in E.O.C.C.Nos.68, 70 & 69 of 2019 respectively, before the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8, praying to punish the petitioners under Section 188(5) of the Companies Act, 2013 (hereinafter referred to as 'Act'). He also submitted that the Central Government vide Gazettee Notification dated 28.09.2020, amended the Section 188 of the Act, in and by which, the offence as contemplated under the earlier provision has been decriminalized. The amended provision of Section 188 of the Act reads as follows:

“39. In section 188 of the principal Act, in sub-section (5), ---

(a) in clause (i), for the words “punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both”, the words “liable to a penalty of twenty-five lakh rupees” shall be substituted;

(b) in clause (ii), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of five lakh rupees” shall be substituted.”



3.1. Since the offence under Section 188(5) of the Act has been decriminalized by virtue of amendment, the complaints filed by the respondent/de-facto complainant in E.O.C.C.Nos.68, 70 & 69 of 2019 before the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8 are unsustainable in law. Hence, those complaints ought to be withdrawn and transferred to an Adjudicating Officer appointed under Section 454 of the Act, for further proceedings.

3.2. In support of his submissions, the learned counsel placed reliance on the order passed by this Court in ***Crl.O.P.No.2735 of 2017 dated 12.12.2022 [B.Kannan Vs. Deputy Registrar of Companies]***. The relevant portion of said order reads as follows:

“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.

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14. *Therefore, we are of the view that the intention of the Parliament is very clear and the since of the Amendment Act 2020 mollifies the rigour of punishment the beneficial construction has to be applied in favour of the accused in pending prosecutions and all the prosecution has to be withdrawn and transferred to the adjudicating authority appointed under Section 454 of the Companies Act for further proceedings in terms of the said provision. ”*

4. The learned Central Government Standing Counsel appearing for the respondent/de-facto complainant fairly submitted that this Court vide its order in ***Crl.O.P.No.2735 of 2017 dated 12.12.2022 [B.Kannan Vs. Deputy***



Registrar of Companies], transferred the complaint against the petitioner therein to the Adjudicating Authority appointed under Section 454 of the Act. Further, pursuant to the said order of this Court, the Ministry conveyed its approval for withdrawing the pending prosecution vide Minutes of Meeting dated 08.06.2023. He also submitted that the respondent/de-facto complainant is ready to comply the direction issuing by this Court. Therefore, the learned counsel prayed this Court to pass appropriate orders.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The issue involved in the present case is that the respondent/de-facto complainant has filed the complaints in E.O.C.C.Nos.68, 70 & 69 of 2019 before the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8, seeking to punish the petitioners for violation of Section 188(5) of the Act and the same are pending. Hence, the aggrieved petitioners have filed the present petitions.



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7. The learned counsel for the petitioners brought to the notice of this Court that the offence under Section 188(5) of the Act has been decriminalized by the Central Government by virtue of amendment and hence, the complaints filed against the petitioners ought to be withdrawn by the respondent/de-facto complainant and the same to be forwarded to an Adjudicating Authority for further proceedings.

8. The learned Central Government Standing Counsel appearing for the respondent/de-facto complainant has not disputed the submissions made by the learned counsel for the petitioners.

9. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, the complaints in E.O.C.C.Nos.68, 70 & 69 of 2019 on the file of the Court of Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8 are forwarded to an Adjudicating Authority appointed under Section 454 of the Act, to adjudicate the contravention committed by the petitioners in terms of Section 454 r/w. 188(5) of the Act.



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10. With the above observations, these criminal original petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order (or) Non-Speaking Order

To

- 1.The Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai – 8.
- 2.The Assistant Registrar of Companies, having office at Shastri Bhavan, 6, Haddows Road, Chennai – 600 006.
- 3.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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