IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **28.04.2023**
PRONOUNCED ON : **10.05.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 34584 of 2019
and
Crl.M.P. Nos. 19179 & 19181 of 2019

Mr. Shailendra Jindal ... Petitioner

Versus

The Deputy Registrar of Companies,
Tamilnadu, Chennai,
having office at
26, Haddows Road,
Nungambakkam,
Chennai – 600 006. ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in E.O.C.C. No. 69 of 2018 on the file of the learned Additional Chief Metropolitan Magistrate, (Economic Offences – I), Egmore, Chennai and quash the same as far as this petitioner is concerned.

For Petitioner : Mr. Kumarpal R Chopra.

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

O R D E R

The petition is to quash the complaint in E.O.C.C. No. 69 of 2018 for the alleged offence under Section 148(8) of the Companies Act, 2013, read with Rule 6(1) of Companies (Cost Records and Audit) Rules, 2014.

2. It is alleged in the complaint that the first accused is a public limited company incorporated on 15.11.1995. The second accused is the Managing Director, the third and fourth accused are the whole time Directors of the said company, and the fifth accused is the Chief Financial Officer of the company; that the petitioner/A6 was the Chief Financial Officer from 02.05.2016 to 01.08.2016. The allegation is that the first accused company did not appoint a cost auditor within the time limit prescribed under Section 148(3) and Rule 6(2) of Companies (Cost Records and Audit) Rules, 2014 and thereby violated Section 148(6) of the Companies Act punishable under Section 148(8) of the Companies Act.

3. The learned counsel for the petitioner submitted that the proceedings against him are liable to be quashed on the ground that the

petitioner was not a Chief Financial Officer of the company when the alleged violation took place. According to the complaint, the cost auditor should have been appointed on or before 01.10.2015 i.e., within 180 days after the commencement of the financial year on 01.04.2015. The petitioner was not in the company on the date when the alleged offence is said to have taken place. The petitioner joined as Chief Financial Officer on 02.05.2016 and resigned from the company on 01.08.2016. The respondent has not disputed the said fact. However, it is their case that since the offence under Section 148(8) of the Companies Act is a continuing offence, the petitioner is also liable since he has not taken steps to rectify the same during his period. The learned counsel submitted that such an argument cannot be countenanced. The learned counsel submitted that unless the petitioner was an officer of the company when the alleged offence was committed, he cannot be prosecuted merely because it is a continuing offence. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in ***Ajay Mitra Vs. State of M.P. and Others*** reported in ***(2003) 3 SCC 11***, wherein it has been observed as follows:-

> *"18. So far as the present appellants are concerned, they came into the picture much later in July 1999, when*

various trademarks and brands of A-1 were purchased by A-6. The appellants were not at all in the picture at the time when the complainant claims to have spent money in improvement of its bottling plant on the basis of the agreement executed with Cadbury Schweppes Beverages India Pvt. Ltd. (A-1). Since the appellants were not in the picture at all at the time when the complainant alleges to have spent money in improving the bottling plant, neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. No offence of cheating can, therefore, be said to have been committed by the appellants on account of the fact that a notice was given to the complainant that the bottling agreements will not be renewed any further after expiry of the initial term. Thus, even if the allegations made in the complaint are accepted to be absolutely true and correct, the appellants cannot be said to have committed any offence of cheating as provided in Section 420 IPC.“

4. The learned counsel for the respondent submitted that it is true that the petitioner was the Chief Financial Officer of the company for a period of three months. He is an officer in default who had not taken any steps to rectify the violation. The offence under Section 148(8) of the

Companies Act is a continuing offence, and hence all the officers of the company, who held the office during the period when the offence was committed and continued, are liable for the alleged offence.

5. This Court finds that admittedly, the petitioner was the Chief Financial Officer of the Company from 02.05.2016 to 01.08.2016. The company ought to have appointed the cost auditor for the financial year 2015-2016 within 180 days from 01.04.2015 i.e. on or before 01.10.2015. The case of the respondent, therefore, is that the company committed the offence on 01.10.2015. The offence under Section 148(8) of the Companies Act may be a continuing offence. However, it cannot be said that the petitioner, who was not in the company when the offence was first committed, is liable merely because he did not rectify the alleged violation during the period when he held the office. The company and the officers, who are in default at the time when the offence was committed, could only be made liable. The submission of the respondent that since the offence is a continuing one, those who joined the company, after the violation was committed, are also liable as they had not taken steps to rectify the violation, is fallacious. This can be demonstrated. For instance, if the complaint is filed in the year 2020 for the alleged violation

that had taken place in the year 2015, can all the officers who were in charge of the company between 2015 and 2020 be prosecuted since the offence is continuing. The answer is 'No'. If such an interpretation is given, the persons/accused in the complaint would be based on when the respondent had filed the complaint. In the instant case, the respondent could have filed the complaint immediately after the violation. If they had filed the complaint immediately, the petitioner would not have been an accused. The persons/accused of an offence cannot be based on the date on which the complaint is filed. The accused would and should remain the same whenever the complaint is filed since the offence is committed on a particular date. Persons who came to know of the offence subsequently cannot be made liable merely because the offence is continuing. Any interpretation to the contrary as submitted by the respondent, would lead to an illogical and absurd situation. Whether an offence is continuing or not is relevant only for the purpose of determining as to whether the complaint is barred by limitation. In this case, the company had already committed the offence and the persons who ceased to be the Directors before the alleged offence or had joined the company after the alleged offence cannot be held liable for the said offence. Further, the observation of the High Court of Calcutta in

Jagadish Singh Vs. Santosh Iyer and Others reported in ***2013 SCC OnLine Cal 22914***, relevant for the instant case is extracted hereunder:-

> *"48. In the case at hand, the petitioner was in no way in the picture when the alleged incident took place in 1992-94. He came in 2005. It will be preposterous to hold guilty anybody for offence, if any, committed well before by the other person. To attract the theory of "continuing offence" the accused must take part in the conspiracy from the starting point. Mere subsequent joining the company will not do. The signing of Director's report cannot establish continuing offence to rope the petitioner."*

6. In view of the admitted fact that the petitioner joined on 02.05.2016 and resigned on 01.08.2016, and the offence was committed on 01.10.2015, he cannot be held liable for the alleged violation. Hence, the impugned complaint against the petitioner is liable to be quashed.

7. Accordingly, this Criminal Original Petition is allowed by quashing the E.O.C.C. No. 69 of 2018 on the file of the learned Additional Chief Metropolitan Magistrate (Economic Offences – I),

Egmore, Chennai. Consequently, the connected Miscellaneous Petitions are closed.

10.05.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

The Deputy Registrar of Companies,
Tamilnadu, Chennai,
having office at
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Dated: 10.05.2023