'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

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

Crl.OP.No.29745 of 2018 and
Crl.MP.No.17438 of 2018

1.M/s.Kumaran Gin and Pressing
Private Limited,
SF No.33/1 & 33/S, Periyapalayam Uttukuli,
Perundurai Taluk, Erode 641 607
Represented by Padmanaban Pattinathar,
Managing Director)
2.Padmanaban Pattinathar
3.Padmanaban Logambika ... Petitioners

Vs.

The Registrar of Companies,
Tamilnadu – Coimbatore,
2nd Floor, 683, Trichy Road,
Singanallur, Coimbatore 641 005 ... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records and to quash the complaint in CC.No.158 of 2018 on the file of the Judicial Magistrate No.III, Coimbatore.

For Petitioners : Mr.K.Subburam

For Respondent : M/s.S.P.Arathi,
Senior Panel Counsel
for Central Government

ORDER

This criminal original petition has been filed to quash the proceedings in CC.No.158 of 2018 on the file of the Judicial Magistrate No.III, Coimbatore.

2. The case of the prosecution is that the respondent lodged complaint alleging that the first accused is a company. It was incorporated under the Companies Act (hereinafter called as 'the Act'). The second and third accused are the officers in charge of the business of the first accused company. They committed default in appointing a cost auditor and also failed to submit cost audit report for the financial year ended 31.03.2016. Therefore, they are liable to be punished for default. The Ministry of Corporate Affairs, Government of India had issued a notice dated 04.05.2016 for non compliance with Section 148 of the Companies Act, 2013 and directed the accused to explain the reasons for non appointment of cost auditor within 15 days from the date of notice. However, after receipt of the summon, they did not reply for the show cause notice. If no reply is received within 20 days from the date of issuance of show cause notice, prosecution against the company and the officers of the company who are in default shall be launched in the court. Accordingly, the respondent launched prosecution as against the petitioners.

3. The learned counsel for the petitioners would submit that the

charges are not specific insofar as the complaint and it does not contain for which financial year a cost auditor is liable to be punished. It does not contain under which category of Rule 3 of the Companies (Cost Records and Audit) Rules, the petitioners are covered and liable to appoint a cost auditor. He further submitted that they had appointed a cost auditor on 14.12.2016 in a General Body Meeting of the company and the notice of such appointment was filed in the required format on 06.01.2017. That apart, the said offence is not continuous offence within the meaning of Section 472 of Cr.P.C. Therefore, the complaint itself is barred by limitation.

4. Heard, the learned counsel appearing on either side.

5. The respondent lodged complaint alleging that under the provisions of Section 148 of Companies Act, 2013, certain class of companies are required to appoint Cost Auditor and failure to make such appointment is an offence as provided in the Act and it is punishable under Section 147(1) of the Act. As per the Companies (Cost Records and Audit) Rules, 2014 and Rule 6 thereof mandates that Companies shall within 180 days of the commencement of every financial year, appoint a cost auditor. It further mandates that every company shall inform the cost auditor concerned of his

appointment and file a notice on such appointment with the Central Government within a period of 30 days of the Board meeting in which such appointment is made or within a period of 180 days of the commencement of the financial year, whichever is earlier, in form CRA-2. The cost auditor so appointed is required to submit the cost audit report in form CRA-3, while also forwarding it to the Board of Directors of the company within a period of 180 days from the closure of the financial year. The company in turn shall, within a period of 30 days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report in form CRA-4. Contravention thereof was, as on date of the offence by the petitioner company, punishable with fine which shall not be less than Rs.25,000/- but which may extend to Rs.5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs.10,000/- but which may extend to Rs.1,00,000/- or both.

6. The petitioners filed Form AOC-4 XBRL for the financial year ended 31.03.2015 stating an annual turn over of Rs.109,90,91,171/- and thereby fell within the ambit of the provisions of Section 148 of the Companies

Act read with relevant rules. The appointment of cost auditor for the financial year 2015 ought to have been done within 180 days from the commencement of the financial year i.e. on or before 30.09.2015. Admittedly, the first petitioner did not appoint a cost auditor within the time prescribed. However, it appointed a cost auditor only on 14.12.2016. It was intimated in Form CR-2 on 06.01.2017. That apart, the appointment of cost auditor on 14.12.2016 is also subject to verification as to which financial year, cost auditor was appointed and a report in Form CRA-4 was filed by the first petitioner. That apart, CR-4 Form is not filed with the office of the respondent. Further, belated appointment of a cost auditor by the petitioners does not absolve them of the offence which stood committed by the very fact that there was a delay in appointment of a cost auditor. Similarly, the payment of additional fees while submitting CRA-2 cannot undo the offence already committed by the petitioners. On 19.02.2018, the Ministry of Corporate Affairs accorded sanction to prosecute the petitioners. Immediately the complaint was lodged on 02.03.2018. Therefore, the offence committed by the petitioners is very much a continuing offence and as such, the complaint filed by the respondent is not barred by limitation. That apart, the grounds raised by the petitioners can be considered only during the trial before the trial court by letting in evidence. Therefore, this Court is not inclined to quash the impugned proceedings and this criminal original petition is liable to dismissed.

7. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

18.10.2023

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

To

1.The learned Judicial Magistrate No.III,
Coimbatore
2.The Registrar of Companies,
Tamilnadu – Coimbatore,

2nd Floor, 683, Trichy Road,
Singanallur, Coimbatore 641 005
3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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