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CRL O.P. No.19456 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2024

Pronounced on : 09.12.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.19456 of 2022
and Crl. M.P. No.12810 of 2022

1. M/s. Ontrack Systems Limited
2. Kaustuv Ray
3. Hari Balasubramanian ... Petitioners / Accused

vs.

The Deputy Registrar of Companies,
Tamilnadu,
having its Office at: Shastri Bhavan,
26, Haddows Road,
Chennai-600 006. ... Respondent / Defacto complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for records in E.O.C.C. No.302 of 2015 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court No.II, Egmore, Chennai and to quash the same.

For Petitioner : Mr. K.P. Sanjeev Kumar

For Respondent : Mr. A. Veeramani



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Central Government Counsel.

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ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in E.O.C.C. No.302 of 2015 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court No.II, Egmore, Chennai and to quash the same.

2. The case of the prosecution is that the accused company represented by the accused 2 and 3, the Directors of the company. The accused have committed the offence within the meaning of Section 2(60) of the Companies Act. As per Section 149(1) of the Companies Act, every company shall have a Board of Directors consisting of individuals as Directors and shall have a minimum number of three Directors in the case of a public company. Two Directors in the case of a private company, and one Director in case of One Person Company and a maximum of fifteen Directors. As per Sub-rule 3 of Section 149 of the Act, every unlisted public company having (a) paid up share capital of One Hundred Crore Rupees or more; (b) turnover of three hundred crore rupees or more, shall appoint atleast one woman Director within one year



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from the commencement of the Companies Act, 2013 i.e., 01.04.2014.

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As per the latest audited financial statements filed by the accused with the complainant, it is seen that the paid up capital of the company is more than 100 crores. Therefore, they should have appointed at least one Woman Director as on 01.04.2015. Therefore, they violated the provisions and liable to be punished under Section 172 of the Companies Act.

3. The learned counsel appearing for the petitioner would submit that the complainant has filed a complaint stating that the paid up capital is more than 100 crores and they ought to have appointed one Woman Director, but not appointed any Woman Director. Therefore, it is contravention of Section 149(3) of the Companies Act, thereby punishable under Section 172 of the Companies Act. In fact, the paid up capital of the company is only Rs.20 crores, less than the required amount of Rs.100 crores and no turn over for more than Rs.300 crores in the company. Already they filed relevant records before the appropriate authorities, but without considering the same, the present petition has



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been filed and the petitioner company is not an accused under Section 149(3) of the Act and hence the complaint is liable to be quashed.

4. The learned Central Government Counsel appearing for the respondent would submit that the complainant has filed a complaint before the learned Additional Chief Metropolitan Magistrate, Economic Offence Court No.II, Egmore, Chennai stating that the petitioner's company's paid up capital is more than Rs.100 crores, thereby, they ought to have appointed one Woman Director, but they have not appointed so far. Hence, they filed a complaint. Moreover, the company is a listed company, thereby, they ought to have appointed one Woman Director, ie., in contravention of Section 149(1)(a) of the Act and the same is punishable only upto fine. Thereby, the same may be referred to concerned authorities. Therefore, the present petition is liable to be dismissed.

5. Heard both sides. Perused all materials available on record.

6. According to the prosecution, the paid up capital of the accused



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company is more than Rs.100 crores and the turn over is Rs.300 crores, thereby the petitioner company has to appoint atleast one Woman Director, but they have not appointed any Woman Director, thereby, they contravened provision of Section 149(3) of the Act. In order to substantiate the above said contention, no any document has been filed by the complainant. However, the petitioner company has produced the Annual report for the year 2012-13.

7. On careful perusal of the above said report, it reveals that there is no paid up capital of Rs.100 crores and above and no turn over of more than Rs.300 crores. At the time of arguments, the learned counsell for the respondent also not disputed the paid up capital and the turn over mentioned in the annual report and the same is not come within the purview of Section 149(3) of the Act. Therefore, there is no contravention and no offence is made out as against the petitioner. However, the learned counsel appearing for the respondent has also brought to the knowledge of this Court that the company is a listed company, thereby they ought to have appointed one Woman Director. In



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this context, the learned counsel appearing for the petitioner would submit that initially the company was a listed company and thereafter, it was delisted. However, Show Cause Notice was given only for the contravention of Section 149(3) of the Companies Act and not on the ground of listed company. The complaint also only for the contravention of non-appointment of Woman Director, since the paid up capital is more than Rs.100 crores. Therefore, the argument of the learned counsel for the respondent that the petitioner company is a listed company, thereby, failed to appoint a Woman Director, cannot be accepted without any pleadings in the complaint. Therefore, the complaint pending in E.O.C.C. No.302 of 2015 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court No.II, Egmore, Chennai is liable to be quashed.

8. In the result, the criminal original petition is allowed and the complaint pending in E.O.C.C. No.302 of 2015 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court No.II, Egmore, Chennai is quashed. No costs. Consequently, the



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connected miscellaneous petition is closed.

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index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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To

1. The Additional Chief Metropolitan Magistrate, Economic Offences Court No.II, Egmore, Chennai
2. The Public Prosecutor, High Court, Madras.
3. The Deputy Registrar of Companies, Tamilnadu, having its Office at: Shastri Bhavan, 26, Haddows Road, Chennai-600 006.

P.DHANABAL,J

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