



CRL O.P. No.19717 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2024

Pronounced on : 09.12.2024

CORAM

The Hon`ble Mr. Justice P.DHANABAL

Crl. O.P. No.19717 of 2022
and Crl. M.P. No.12968 of 2022

Kalyanasundaram Chandrasekaran

S/o. O.V. Kalyanasundaram

.... Petitioner.

vs.

Assistant Registrar of Companies,
Tamilnadu, Chennai.

having office at: Shastri Bhavan,

26, Haddows Road, Chennai-600 006.

... Respondent

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.91 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For Petitioner : Mr. K.P. Anantha Krishna
For Respondent : Mr. S. Janarthanam,



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Senior Panel Counsel /

Government Standing Counsel.

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ORDER

This Criminal Original petition has been filed to quash the pending proceedings in E.O.C.C. No.91 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai.

2. The *case of the prosecution* is that the company M/s. Info-Drive Software Limited was registered on 16.03.1988 under Companies Act and the accused No.1 company is represented by the accused Nos.2 to 8, who were the officers of the company. The accused No.2 to 8 were the officers of the company when the offence was committed as per the particulars filed in the office of the complainant and he is the officer in default within the meaning of Section 2(60) of the Act, 2013. On examination of the records of the accused company, it was found that pursuant to the approval of the members at the 26th Annual General Meeting of the company held on 30.09.2014, the company sub-divided each equity share of nominal face value of Rs.10 into 10 equity share of the face value of Rs.1 each in terms of Section 61(d) of the Act. The



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effective date for the said sub-division was December 26, 2015. The authorized equity share capital of the company after sub-division of the face value of Equity shares in Rs.100 crores and divided into 100 crores equity shares of Rs.1/- each. As per Section of 64(1)(a) of the Act, the company shall file a notice in SH-7 with the Registrar, the alteration of its share capital made by the company under Section 61(d) of the Act within a period of 30 days of such alteration. But the accused have not filed SH-7 as required under Section 64(1) of the Act read with Rule 15 of Companies (Share Capital & Debentures) Rules, 2014. Pursuant to the approval of the members at the Extra-ordinary General Meeting of the company held on 02.04.2014, the authorized share capital of the company was increased from Rs.70 crores to Rs.100 crores divided into 100 crores equity share of Rs.10/- each. As per provision of Section 64(1)(a) of the Act, the Company is required to file a notice of increase / alteration of its share capital made under Section 61 of the Act with the Registrar within a period of 30 days of such alteration along with altered memorandum of association. But the company has not filed SH-7. Therefore, there is a violation and thereby, the accused have to be



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prosecuted under Section 64(2) of the Companies Act. Now the 8th accused challenged the said cognizance taken by the learned Magistrate through this petition.

3. The learned counsel appearing for the petitioner would contend that the respondent has filed a complaint stating that during the financial year 2014-15, the company had sub-divided into equity share of nominal face value of Rs.10/- each to 10 equity share of the face value of Rs.1/- each. This was done pursuant to the approval of the members of the company at the 26th Annual General meeting held on 30.09.2014 and the same was with effect from 26.12.2015. But the company failed to file the required notice in Form SH-7 as required under the Act. Further allegation is that authorized share capital was increased from Rs.70 crores to Rs.100 crores without notice in Form SH-7. This petitioner has been arrayed as 8th accused. The alleged offence is punishable only with fine. This petitioner and other accused are the officers of the company and no any specific role attributed to the petitioner and the company is bereft of role played by any of the directors. The petitioner was



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appointed on 13.02.2007 as Director of the company and resigned his Directorship on 13.05.2014. During his tenure, the petitioner was a non-executive Director, not being involved in day-to-day affairs of the company. The petitioner was neither aware of such contravention nor has consented or connived to the same and he cannot be an "officer who is in default" within the meaning of Section 2(60) of Companies Act. The petitioner was permanently residing and employed in Dubai from 2013 to 2019. He was a Non-Resident Indian during the financial year 2014-15, when the defaults are alleged to have occurred. The petitioner has resigned prior to the Annual General Meeting held on September 30, 2014. Therefore, the petitioner cannot be made liable for the acts done by the Company post his resignation. Moreover, the alleged occurrence took place in the year 2015, but the complaint was lodged only in the year 2019, i.e., after a lapse of 4 years. Since the offences are only punishable with fine, the period of limitation was also lapsed. Therefore, the pending proceedings are liable to be quashed.

3.1. The learned counsel appearing for the petitioner has relied



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upon the following judgments:

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(i) V. Karthikeyan v. Registrar of Companies reported in 2001 2 LW (Crl) 656.

(ii) Registrar of Companies vs. M/s. Shashi Theatres Pvt. Ltd., reported in 2007 SCC Online Guj 250.

(iii) Shree Dharma Sugar Industries (P.) Ltd. and others vs. Registrar of Companies reported in 1987 SCC Online Kar 397.

(iv) R. Aghoramurthy, Registrar of Companies, Bombay vs. Bombay Dyeing and Manufacturing Company Limited.

4. The learned Central Government Senior Standing Counsel appearing for the respondent would submit that this petitioner along with other accused are the officers of the 1st accused company and they converted the share value of Rs.10/- from Rs.1/- through Annual General Meeting held during the month of September 2014. But, no form SH-7 was filed as required under Section 64(1) of the Act. Not only that,



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pursuant to the approval of the Extra-ordinary General Meeting of the company dated 02.04.2014, the authorized share capital of the company was increased from Rs.70/- crores to Rs.100/- crores. As per Section 64(1)(a) of the Companies Act, the company is required to file a notice of increase / alteration of its share capital made under Section 61 of the Act with the Registrar within a period of 30 days of such alteration along with altered memorandum of association. The company has however not filed SH-7 so far. Therefore, the officers of the company are liable to be prosecuted.

4.1. The learned Senior Panel Counsel appearing for the respondent has relied upon the following judgments:

(i) The Registrar of Companies vs. M/s. Fair Growth Agencies Limited.

(ii) Thomas Philip and others vs. Assistant Registrar of Companies and another reported in 2005 SCC Online Ker 266.

(iii) First Leasing Company of India Ltd., v. Additional Registrar of Companies reported in [1997] 89 Comp Cases 635 (Madras).



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(iv) Registrar of Companies v. Rajshree Sugar & Chemicals Ltd.

and others reported in (2000) 6 Supreme Court Cases 133.

5. This Court heard both sides and perused all the materials available on record.

6. In this case, it is an admitted fact that the petitioner was the Director of the A1 company and he was appointed as Director from 13.02.2007 to 13.05.2014. According to the petitioner, there is no averments in the petition as about the participation of the petitioner in the day to day affairs of the company. This Court also carefully perused the records. Nowhere it is stated about the day-to-day participation of the petitioner in the company affairs. Another ground raised by the petitioner is that he resigned his Directorship on 13.05.2014, but the alleged meeting was convened on 30.09.2014. He also produced the Form DIR-12. On careful perusal of the same, it reveals that this petitioner had resigned his Directorship and he was relieved from



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13.05.2014 and his resignation was taken place with effect from 13.05.2014. Therefore, on the date of alleged Annual General Meeting, the petitioner was not a Director in respect of sub-division of equity share of nominal face value of Rs.10/- each to 10 equity share of the face value to Rs.1/- each. In the complaint, there are two allegations levelled against the petitioner. One is for non-production of SH-7 and for the split of shares. Another one is the company authority required to issue notice in Form SH7 for the increase of share capital from Rs.70 crores to Rs.100 crores dated 02.04.2014. This was happened prior to the resignation of the petitioner. Therefore, in respect of the 2nd allegation, that was prior to his resignation. Hence the contention of the petitioner that he was not a Director at the time of occurrence is not an acceptable one. However, the complaint averments have not revealed details as to how the petitioner participated in the day to day affairs of the company to attract penal provisions. Moreover, the petitioner was residing in Dubai and there is no any allegations as against this petitioner that the petitioner was actively participated in the day to day affairs of the company.



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7. The next point raised by the petitioner is that the alleged occurrence took place in the year 2014, but the complaint has not been filed within a limitation period of 6 months from the date of knowledge of the petitioner. In the complaint, the complainant has not stated about the date of knowledge. Therefore, without any specific particulars and based on vague allegations, the petitioner cannot face any trial. As far as limitation is concerned, the complaint has been filed in the year 2019, i.e., after lapse of 5 years. The complaint ought to have filed within the period of 6 months, since the offence is punishable with fine only. Therefore, the complainant has not filed the complaint within the limitation period.

8. At this juncture, the learned counsel appearing for the petitioner has relied upon the following judgments:

(i) V. Karthikeyan v. Registrar of Companies reported in 2001 2 LW (Crl) 656.

(ii) Registrar of Companies vs. M/s. Shashi Theatres Pvt. Ltd., reported in 2007 SCC Online Guj 250.



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(iii) Shree Dharma Sugar Industries (P.) Ltd. and others vs.

Registrar of Companies reported in 1987 SCC Online Kar 397.

(iv) R. Aghoramurthy, Registrar of Companies, Bombay vs.

Bombay Dyeing and Manufacturing Company Limited.

9. On careful perusal of the above said judgments, it is clear that Section 468 of Cr.P.C. is applicable to the cases of Companies Act and the bar under Section 468 of Cr.P.C. is applicable to the cases filed by the Registrar of Companies under Companies Act before Criminal Court and the commencement of limitation, will be on the date of knowledge of the crime.

10. In this case on hand also, the punishment is only fine and therefore, the limitation period is 6 months under Section 468 of Cr.P.C.. But as far as commencement of limitation is concerned, nowhere in the complaint, stated about the date of knowledge by the complainant. Therefore, the date of occurrence has to be taken into account. After 5 years from the date of occurrence, the present complaint has been filed.



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Therefore, the complaint filed is barred by limitation as contemplated under Section 468 of Cr.P.C.

11. The learned Senior Panel Counsel / Government Standing Counsel appearing for the respondent would contend that the complaint is within the period of limitation, though there is no any specific averments in respect of date of knowledge, it is to be decided through trial and at this stage, the point of limitation cannot be decided and moreover, since it is only punishable upto fine, the case may be referred to the concerned authorities appointed under Companies Act.

12. The learned Senior Panel Counsel appearing for the respondent has relied upon the following judgments:

(i) *The Registrar of Companies vs. M/s. Fair Growth Agencies Limited.*

(ii) *Thomas Philip and others vs. Assistant Registrar of Companies and another reported in 2005 SCC Online Ker 266.*



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(iii) First Leasing Company of India Ltd., v. Additional Registrar of Companies reported in [1997] 89 Comp Cases 635 (Madras).

(iv) Registrar of Companies v. Rajshree Sugar & Chemicals Ltd. and others reported in (2000) 6 Supreme Court Cases 133.

13. On a careful perusal of the above said judgments, it is clear that the complaint alleging commission of offences under Sections 61(1)(d) read with 64(1)(a) of the Companies Act, 2013 read with Rule 15 of the Companies (Share Capital & Debenture) Rules, 2014 is punishable with fine only and the date on which, the commission of offence came to the knowledge of the Registrar is the starting point for the limitation.

14. In the case on hand, the date of alleged occurrence was in the year 2014, but the complaint was lodged only in the year 2019, that too without referring the date of knowledge by the complainant. Therefore, those case laws relied on by the Senior Panel Counsel appearing for the respondent will not be applicable to the present facts of the case.



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15. Therefore, as discussed above, this Court is of the opinion that the complaint is barred by limitation and there are no specific allegations levelled against the petitioner, in respect of his participation in the day to day affairs of the company. Thereby, the criminal complaint cannot be lodged against this petitioner. Therefore, the complaint as against the petitioner is liable to be quashed.

16. In the result, the criminal original petition is allowed and the complaint in E.O.C.C. No.91 of 2019 pending on the file of the learned Additional Metropolitan Magistrate, Egmore, Chennai is quashed as against this petitioner. No costs. Consequently, the connected miscellaneous petitions are closed.

09.12.2024

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index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

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P.DHANABAL,J

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To

1. The Additional Chief Metropolitan Magistrate, Economic Offence Court No.I, Egmore, Chennai.
2. The Public Prosecutor, High Court, Madras.
- 3.The Assistant Registrar of Companies,
Tamilnadu, Chennai.
having office at: Shastri Bhavan,
26, Haddows Road, Chennai-600 006

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