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.19936 of 2022
and Crl. M.P. No.13114 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.88 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences Court, Egmore, Chennai and to quash the same.

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

Senior Panel Counsel /
Government Standing Counsel.

ORDER

This Criminal Original petition has been filed to quash the pending proceedings in E.O.C.C. No.88 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences Court, 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 9, who were the officers of the company. The accused No.2 to 9 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 Directors' Report for the financial year 2014-15, it was found that the accused, during 2014-15, have issued 91 Zero Coupon Foreign Currency Convertible Bonds of US$100,000 each due for conversion in 2019. The accused have converted 18 FCCBs into

10,81,62,000 equity shares of Rs.1/- each in terms of conversion notices received from the bondholders. Consequently, the paid up share capital of the accused company as increased from Rs.45,09,02,200/- equity shares of Rs.1/- each to Rs.55,90,64,200 equity shares of Rs.1/- each. Likewise, during the financial year 2015-16, the accused have alloted 10,81,62,000 equity shares consequent to the notice received from bondholders for conversion of the 11 Foreign Currency Convertible Bonds for total value of US$1.8 million at a conversion price of Rs.1/- per share translated from US$ at the fixed exchange rate of Rs.60.09 per US$. Consequently, the paid up share capital of the accused company has increased from 55,90,64,200 equity shares of Rs.1/- each to 62,51,63,200 equity shares of Rs.1/- each. As on 31st March 2016, 62 FCCBs were outstanding. As per Section 39(4) of the Act read with Rule 12 of the Companies (Prospectus and Allotment of Securities) whenever, the company having share capital makes any allotment of securities, shall file PAS-3 with the Registrar within 30 days. But the accused have not filed PAS-3 with the Registrar. Therefore, there is a violation under Section 39(4) of the Act and thereby, the accused have to be prosecuted under Section 39(5) of the Companies Act. Now the 9th 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 alloted 10,81,62,000 equity shares consequent to the conversion notice received from the bondholders for conversion of the Foreign Currency Convertible Bonds for total value of US$1.8 million at a conversion price of Rs.1 per share translated from US$ at the fixed exchange rate of Rs.60.09 per US$, in accordance with the terms of the offering Circular dated 12.12.2014 for issue of US$9.1 million unsecured Zero Coupon Foreign Currency Convertible Bonds. Consequently, the paid up share capital of the company has increased from Rs.45,09,02,200 aggregating 45,09,02,200 equity shares of Rs.1 each to Rs.55,90,64,200 aggregating 55,90,64,200 equity shares of Rs.1 each. The company allegedly failed to file the return of allotment in Form PAS-3 as required under the Act. This petitioner has been arrayed

as 9th 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 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 even before the Offering Circular dated 12.12.2014. Therefore, the petitioner cannot be made liable for the acts done by the Company post his resignation. Moreover, the alleged default occurred on the date of expiry of thirty days from the date of the allotment of the Securities i.e., 22.04.2015, 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 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.

(iii) Shree Dharma Sugar Indusries (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 the company has alloted equity shares to bond holders by conversion of Foreign Currency Convertible Bonds (FCCB) pursuant to the Offering Circular dated 12.12.2014. The share capital of the company had accordingly increased for which required forms were to be filed with the complainant. As per Section 39(4) of the Act read with Rule 12 of the Companies (Prospectus and Allotment of Securities) whenever, the company having share capital makes any allotment of securities, shall file PAS-3 with the Registrar within 30 days. But the accused have not filed PAS-3 with the Registrar. Therefore, there is a violation under Section 39(4) of the Act and thereby, the accused have to be prosecuted under Section 39(5) of the Companies Act. 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).

(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 Offering Circular was issued on 12.12.2014. 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 13.05.2014 and his resignation was taken place with effect from 13.05.2014. Therefore, on the date of alleged Offering Circular, the petitioner was not a Director in respect of allotment of securities. In the complaint, the allegations levelled against the accused is that as per Section 39(4) of the Act read with Rule 12 of the Companies (Prospectus and Allotment of Securities), whenever the company having share capital makes any allotment of securities, return of allotment in PAS-3 shall be filed with the Registrar within 30 days. The accused company is alleged to have alloted equity shares to bond holders by conversion of Foreign Currency Convertible Bonds pursuant to the Offering Circular dated 12.12.2024. This was happened after the resignation of the petitioner. Hence the contention of the petitioner that he was not a Director at the time of occurrence is an acceptable one. Further, the complaint averments did not disclose 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 or documents that the petitioner was actively participated in the day to day affairs of the company.

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 period of limitation i.e., 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 limitation 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.

(iii) Shree Dharma Sugar Indusries (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. 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 has 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.

(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 39(4) of the Act read with Rule 12 of the Companies (Prospectus and Allotment of Securities) 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 learned Senior Panel Counsel appearing for the respondent will not be applicable to the present facts of the case.

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 pending in E.O.C.C. No.88 of 2019 pending on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offence Court No.I, Egmore, Chennai is quashed as against this petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

CRL O.P. No.19936 of 2022

09.12.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

P.DHANABAL,J

mjs

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

CRL O.P. No.19936 of 2022

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