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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28-03-2025**

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP NO. 9406 of 2025

and Crl.MP.Nos.6231 & 6232 of 2025

K.C.Palanisamy

... Petitioner

Vs

The Assistant Registrar of Companies Tamil Nadu,
Registered Office
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records in EOCC No.67 of 2023(split up from EOCC No.477 of 2009) pending on the file of the Additional Chief Metropolitan Magistrate EO – II Egmore, Chennai and quash the same as against the petitioner/5th accused.

For Petitioner : Mr.N.Ramakrishnan

ORDER

This petition has been filed to quash the proceedings in EOCC No.67 of 2023(split up from EOCC No.477 of 2009) pending on the file of the Additional Chief Metropolitan Magistrate EO – II Egmore, Chennai.



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2. The case of the prosecution is that the respondent filed a complaint for the offence punishable under Section 159 of the Companies Act as against the 7 accused persons in which the petitioner is arrayed as 5th accused, alleging that on inspection, the 1st accused company has not filed Annual Return for the year 2005 with the respondent office. It is contravention of Section 159 of the Companies Act and is punishable under Section 162 of the Act. Since this is a continuing offence, it is not barred by limitation. After inspection, the accused were issued a show cause notice on 18.01.2008. However on receipt of the same, the accused failed to send any reply to the show cause notice. Hence, the complaint.

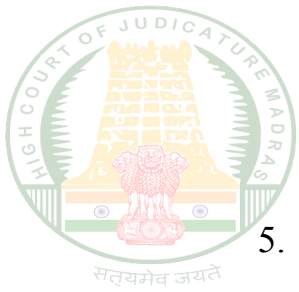
3. The learned Counsel appearing for the petitioner would submit that the petitioner is arrayed as the 5th accused and he was one of the Directors of the 1st accused company. After his induction as one of the Directors of the 1st accused company, his wife died due to illness, and as such the petitioner could not look into the management and affairs of the 1st accused company. In the meantime, a dispute arose between the accused and the company with regard to the management and administration. Therefore, he resigned from the Board of Directors of the 1st accused company with effect from 16.11.2005, and Form No. 32 was also filed before the Registrar of the Company. Therefore, the



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petitioner has nothing to do with the 1st accused / Management and administration of affairs from 16.11.2005. The respondent filed a batch of complaints against all other accused persons for alleged contraventions of Sections 159, 210 and 220 and 166 of the Companies Act. He further submitted that as per Section 159 of the Act, the annual returns shall be filed within 60 days from the date on which the Annual General Meeting of the Company was held as contemplated under Section 166 of the Companies Act. Therefore for the financial year 2005, the Annual General Meeting of the 1st accused is to be held within a period of 60 days from the date of the last Annual General Meeting. As such annual report has to be filed within a period of 60 days from the date of Annual General Meeting. The petitioner had already resigned from the 1st accused company on 16.11.2005, much prior to the expiry of the time line stipulated under Section 166 of the Act. Therefore, the petitioner is not liable for the contraventions under Section 166 of the Act.

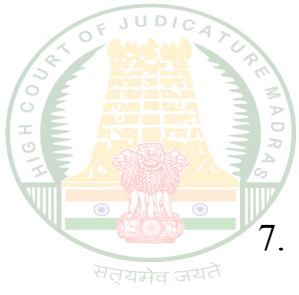
4. Heard the learned counsel for the petitioner and perused the materials available on record.



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5. On perusal of the records, it reveals that the filing of the annual returns cannot be construed, as there is no specific date of the last Annual General Meeting mentioned by the petitioner anywhere. The petitioner revealed this information from the 1st accused company by filing Form No.32 before the Registrar of Companies. It is all a disputed question of facts and cannot be decided here, especially under Section 482 of the Cr.P.C. This matter has to be taken further by the trial court. That apart, the only reason for the petitioner's situation was the non-appearance of the petitioner before the Trial Court, which resulted in the trial being split up into EOCC.No.477 of 2009 against the petitioner, and now it is facing trial in EOCC.No.67 of 2003. Therefore the petitioner has failed to make out a prima facie case to entertain this quash petition, which is dismissed accordingly.

6. In view of the above discussion, this Court is not inclined to quash the proceedings in E.O.C.C.No.67 of 2023(split up from EOCC No.477 of 2009) on the file of the Additional Chief Metropolitan Magistrate EO-II, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court.



7. Accordingly, the Criminal Original Petition stands dismissed.

WEB Consequently, connected miscellaneous petitions are also closed.

28.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

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To

1. The Additional Chief Metropolitan Magistrate EO – II
Egmore, Chennai

2. The Assistant Registrar of Companies Tamil Nadu,
Registered Office
Shastri Bhavan, Haddows Road,
Chennai – 600 006.



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G.K.ILANTHIRAIYAN, J.

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(2/3)**

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