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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 21st April, 2025***

\+ **<u>CRL.M.C. 2023/2021, CRL.M.A. 13674/2021 (stay)</u>**

ARUN SAINI
S/o Late Shri Madan Dass Saini
R/o House No.36, Second Floor, Pocket 1,
Jasola, New Delhi-110025 ....Petitioner

Through: Mr. N. Hariharan, Senior Advocate with Mr. Akshai Malik, Mr. Khawar Saleem, Ms. Vaundhara N. Mr. Aman Akhtar, Ms. Sana Singh, Mr. Bhumanjay Tomar and Ms. Kritika Goyal, Advocates along with Petitioner.

versus

REGISTRAR OF COMPANIES
Ministry of Corporate Affairs
NCT of Delhi & Haryana
4th Floor, IFCI Tower,
61, Nehru Place,
New Delhi-110019 .....Respondent

Through: Counsel for Respondent (appearance not given).

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>J U D G M E N T</u> ***(oral)***

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner, Arun Saini seeking quashing of the Summoning Order dated 13.11.2019 in Complaint Case No. 10143/2019 filed under Section 200 Cr.P.C. and the proceedings emanating therefrom, for the offences under

Section 628 read with Section 629 Companies Act, 1956, pending in the Curt of learned ACMM, Delhi.

2. It is submitted in the Petition that the Complaint was filed before the learned ACMM, in which the Petitioner has been summoned *vide* Order dated 13.11.2019 and cognizance has been taken for the offence. It is asserted that the cognizance has been taken of the alleged offence, after five years and two months its knowledge to the Respondent/Complainant. As per Section 468 Cr.P.C., the Complaint could have been filed within three years, but because it is beyond a period of three years, the cognizance is liable to be quashed. Reliance has been placed on *State of Punjab vs. Sarwan Singh,* (1981) 3 SSC 34.

3. It is further submitted that the Complaint was supported with an Application of the Complainant, for Condonation of Delay but the same has been overlooked and not considered in the impugned Order. It is, therefore, submitted that the Summoning Order is bad in law and is liable to be set-aside.

4. ***Learned Senior Advocate on behalf of the Petitioner*** submits that even if the date of knowledge of the alleged commission of offence, which is 22.09.2011 is taken as the relevant date, the Complaint has been filed only on 02.09.2019, which is hopelessly barred by limitation.

5. *Secondly*, even though the Condonation of Delay Application alleges the delay of five months, but the delay, in fact, is of more than five years and two months, for which there is no cogent explanation given in the Application.

6. It is further argued that the Petitioner is the Chartered Accountant of the Company while the Complaint has been filed only in the name of the

Petitioner in his individual capacity and the Company has not been made a party. The Complaint *per se* is also not maintainable under the law. It is, therefore, submitted that the Summoning Order dated 13.11.2019 be quashed.

7. ***Learned counsel on behalf of the Respondent/ROC*** has submitted that it was the obligation of the Chartered Accountant of the Company who has filed the list of Shareholders annually, which he has failed to do. Moreover, it is a continuing offence and therefore, the Complaint was not barred by limitation. Thirdly, the Chartered Accountant/Petitioner had made a false statement by omitting to mention the name of the shareholders in the list. Further, as he failed to file the list of Shareholders for the year 2009-2010 and thereby the name of the shareholder, Mr. Rajesh Jindal, got omitted, which is an offence under Section 628 of the Companies Act, 1956 punishable under Section 629 of the Companies Act.

8. It is submitted that the Complaint is filed within limitation as the sanction was obtained only on 09.03.2016 and the show cause notice was issued for the first time on 25.04.2017.

9. It is submitted that there is no merit in the present petition, which is liable to be dismissed.

10. **Submissions heard and the record perused.**

11. One Shri Rajesh Kumar Jindal who was the shareholder of the shares of the Company V4 Infrastructure Private Limited, filed a Complaint dated 22.09.2011 before Registrar of Companies for violation of various provisions of Companies Act, 1956.

12. The main averment was that the List of Shareholders for the Year 2009-10 had not been uploaded whereby there was non-compliance of the

provisions of the Companies Act for which the Company was liable to be prosecuted under Section 628 of Companies Act which was punishable under Section 628 and 629 of Companies Act.

13. Pertinently, on this Complaint of 22.09.2011 before the Registrar of Companies, a Show Cause Notice dated 23.07.2014 was issued to the Petitioner who was the Chartered Accountant of the Company to which he gave the Reply on the same date i.e. 23.07.2014. However, the Registrar of Companies went into hibernation and the Sanction for Prosecution was obtained after almost two years i.e. on 09.03.2016. However, the Complaint got filed only on 02.09.2019 along with an Application for Condonation of Delay which was claimed to be of five months.

14. The learned M.M took cognizance on the Complaint and issued summons vide Order dated 13.11.2019. In the impugned Order it was observed that the Complaint was within limitation thereby reflecting that even though as per the Complainant there was a delay for which condonation was sought, but the learned M.M without considering the said Application, observed that the Complaint was within limitation.

15. The alleged offence relates to filing the annual return for the financial year 2009-10. As per S.166 of the Companies Act, the Company is required to hold its AGM by 30th September of the relevant financial year, i.e. 30.09.2010, and as per S.159 it is required to the file the List of Shareholders within 60 days from the date of AGM, i.e. by 30th November of the relevant year. It is, therefore, **an obligation of the Company to file a List of Shareholders through its Chartered Accountant**.

16. The ***First aspect*** which merits consideration is that the Complaint has been filed against the Chartered Accountant without making the Company a

party to the Complaint. In the case of *Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd & Ors.*, AIR 2021 SC 4587 it has been held that no Director, Employee or Officer of a Company can be vicariously impleaded as an accused without making the Company as a party. Since, the Complaint has been filed only against the Petitioner, who is the Chartered Accountant/Official of the Company; he could not have been sued in his individual name. On this short ground itself, the Complaint is liable to be quashed.

17. The ***second aspect*** which emerges is that there was no violation for the subsequent year 2010-11 for which the List of Shareholders had been filed within time as soon as the Complaint was filed by Rajesh Kumar Jindal (HUF) on 22.09.2011, The delay in filing its List of Shareholders is for the preceding year 2009-10 which got filed on 19.06.2012 by the Company, immediately after the filing of present Complaint before the ROC.

18. Section 628 of the Companies Actprovides for penalty for false statement, and is reproduced as under:

> ***"628. Penalty for false statements -***
>
> *If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement-*
> *(a)which is false in any material particular, knowing it to be false; or*
> *(b)which omits any material fact knowing it to be material;*
> *he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine."*

19. The offence under S.628 is if in any Return, Report, Certificate, Balance Sheet etc. a Statement is made by a person *which is false in any*

material particular, knowing it to be false or which omits any material fact knowing it to be material.

20. Pertinently, the alleged Complaint was on account of non-filing of the List of Shareholders for a particular Financial Year. There is not a whisper about any false statement having been given by the Petitioner. Once the List of Shareholders itself was not filed, where is the question of giving any false material particular or omitting to mention a particular material fact.

21. The basic ingredients of Section 628 of the Companies Act have not been fulfilled. The contents of the Complaint do not make out a case under Section 628 of the Companies Act and the Complaint is liable to be quashed.

22. The ***third aspect*** for consideration is the limitation in filing the Complaint. The Companies Act requires the list of shareholders along with other relevant documents of the Company within 60 days of holding the AGM, which is required to be held latest by 30th September of the relevant financial year. This implies that the alleged non-compliance of the provisions of Section 628 should have happened on 30.11.2010 by when the List of Shareholders was to be uploaded.

23. Even though no offence is made out under S.628, but even for sake of arguments it is considered, as per Section 628 Companies Act offence therein is punishable with a sentence of two years which implies that the Complaint could have been filed within three years of the commission of the alleged offence in 2009-2010, i.e. up to 01.12.2013 in terms of S.468 Cr.P.C.

24. The Registrar of Companies having received the Complaint from Rajesh Kumar Jindal on 22.09.2011, the Show Cause Notice was issued after almost three year i.e. 23.07.2014. Thereafter, the Sanction has been

obtained after almost two years on 09.03.2016. Even thereafter, the ROC has filed its Complaint after almost three and half years on 02.09.2019. There is not an iota of explanation forthcoming for such indifference in filing the Complaint on behalf of ROC after almost eight years.

25. Interestingly, even though the Complaint was supported with an Application for Condonation of Delay, it was only alleging the delay to be of five months for which also there was no cogent explanation given. It is clearly evident that the Complaint was hopelessly barred by limitation.

26. Moreover, even though the aspect of limitation has not been considered by the learned M.M. while taking cognizance and issuing the Notice, but the Application for condonation of Delay gives no explanation for delay of almost eight years, but claims the delay to be of five months for which also there is no explanation except indifference. There exist no ground whatsoever, for condonation of Delay.

27. To sum up, *first* and foremost no offence in the Complaint is disclosed. *Secondly*, this Complaint without making the Company a party is not maintainable and *thirdly*, there is an inordinate delay of almost eight years in filing the Complaint, for which there is no explanation.

28. The present Complaint and all the proceeding emanating there from including the Summoning Order dated 13.11.2019, are hereby quashed for the aforesaid reasons.

29. The Petition is allowed. Pending Application, if any, also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 21, 2025
rs/va