

(2009) 08 MAD CK 0277

Madras High Court

Case No: Criminal O.P. No. 23685 of 2007 and M.P. No. 1 of 2007

P.L. Narasimhalu

APPELLANT

Vs

The Assistant Registrar of
Companies

RESPONDENT

Date of Decision: Aug. 28, 2009

Acts Referred:

- Companies Act, 1956 - Section 159, 162, 220, 5
- Criminal Procedure Code, 1973 (CrPC) - Section 472

Citation: (2009) 152 CompCas 353 : (2010) 100 SCL 515

Hon'ble Judges: C.S. Karnan, J

Bench: Single Bench

Advocate: P. Suresh, for the Appellant; S. Haja Mohideed Gisthi, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The petitioner/3rd accused has filed the above Criminal Original Petition to call for the records in E.O.C.C. No. 36 of 2007 pending on the file of Learned Additional Chief Metropolitan Magistrate, Economic Offences (E.O-II), Egmore, Chennai, Chennai District and quash the same.

2. The prosecution case is that the Respondent/Complainant filed the complaint against 6 accused persons on an alleged offence u/s 159 r/w Section 162 of the Companies Act, 1956. The complainant has stated that the accused 2 to 6 are the Directors/Managing Director/Whole Time Director/Company Secretary and officers of the company, when the offence was committed as per the particulars filed in the office of the complainant and their officers, who is in default within the meaning of Section 5 of the Act. According to the provisions of Section 220 of the Act, the company and its Directors are under statutory obligation to file with the

complainant Balance Sheet and Profit and Loss Account in the prescribed form duly placed in the Annual General Meeting within 30 days from the said date ie., on or before 30.10.2006, and in case no annual general meeting was held within thirty days of the due date of annual general meeting.

3. The accused have not filed the copies of the Balance Sheets, Profit and Loss Account before the complainant, thereby, have committed an offence which is punishable u/s 162 of the act. A show cause notice was issued on 13.12.2006 by the complainant in this behalf. As per Section 162 of the Companies Act, every officer of the company, who is in default shall be punishable with fine. Further the offences u/s 159 of the Act is a continuing one, within the meaning of the Section 472 of the Code of Criminal Procedure. Therefore, no question of limitation arises. And therefore, the accused have to be punished for the above default. Hence, the complainant filed this case against the accused persons.

4. The petitioner/3rd accused has filed this quash petition on the following grounds. That, the petitioner aged about 75 years was unable to concentrate on day to day affairs of the company and hence he resigned from the company. On 30.04.1994, the petitioner had tendered his resignation letter to the 1st accused company and the same was accepted by the company on 02.05.1994. The petitioner has also surrendered his share capital to the 2nd accused, who is the Managing Director of the company on 02.05.1994. The petitioner has been completely relieved from the affairs of the company. The respondent has issued a notice on 29.06.2000 stating that the 1st accused company defaulted in not submitting the annual returns and the relevant balance sheets before the respondent for the financial year 1996, for which the petitioner had submitted a reply dated 04.08.2000 mentioning the fact that the petitioner has resigned his post on 30.04.1994 from the company and enclosed a copy of the resignation letter dated 30.04.1994 and the acceptance letter dated 02.05.1994. Thereafter, the complainant sent a show cause notice dated 11.12.2006 for non-filing of annual returns. Again the petitioner sent a reply on 17.01.2007, referring the petitioner's earlier letter dated 04.08.2000. Thereafter, no communication had come from the complainant. The petitioner has further alleged that he has no nexus with the company but he has been wantonly implicated in the case in E.O.C.C. No. 36 of 2007, as accused No. 3. Further, the petitioner, in support of his case, has filed resignation letter dated 30.04.1994, to the company. The same was accepted by the company on 02.05.1995. After 4 years, show cause notice has been issued by the complainant on 29.06.2000 for which reply was sent to the complainant on 04.08.2000. Again show cause notice was issued by the complainant on 11.12.2006 by R.P.A.D. for which the petitioner sent a reply to the company on 17.01.2007. This reply was also sent by Registered Post.

5. The learned Counsel for the petitioner, in support of his case has cited a Judgement of Madras High Court reported in 1976 46 Comp Cas T. Morari v. State (Mad.). After hearing the arguments advanced by the learned Counsels for their

respective parties and considering the facts and circumstances of the case, the Court is of the view that the petitioner/accused person resigned his post from the company on 30.04.1994. The same was accepted by the company on 02.05.1994. The same was informed to the complainant on 04.08.2000 and again on 17.01.2007, by the petitioner. As such, the petitioner has no connection with the company affairs, particularly, the affairs during financial year 2005-2006. Therefore, the petitioner is not liable to face the criminal proceedings in E.O.C.C. No. 36 of 2007 on the file of Chief Additional Metropolitan Magistrate Court, Chennai. Accordingly, the quash petition has to be allowed against the petitioner/accused No. 3 alone. Hence, the Criminal Original Petition No. 23685 of 2007 is allowed.

Consequently, connected Miscellaneous Petition is not necessary, hence closed.