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P.L. Narasimhalu Vs The Assistant Registrar of Companies

Criminal O.P. No. 23684 of 2007 and M.P. No. 1 of 2007

Court: Madras High Court

Date of Decision: Aug. 28, 2009

Acts Referred:
Companies Act, 1956 â€" Section 159, 162#Criminal Procedure Code, 1973 (CrPC) â€" 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. 35 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. The 1st accused is the company namely M/s. Priya Research Laboratories Limited. The Accused No. 2 to 6

are the Directors/Managing Directors/Whole time Directors/Company Secretaries and Officers of the company. The complainant has stated that

the Annual General Meeting of the company for the financial year 31.03.2006 should have been held latest by 30.09.2006, and the annual return

made up to that date should have been filed with the complainant within 60 days from the said date i.e., on or before 29.11.2006 and in case, no

Annual General meeting was held within 60 days of the date of the due date of Annual General Meeting in terms of Section 159 of the Act.

3. The complainant submitted that the accused did not file the annual return made up to 30.09.2006 before the complainant, thereby, committed an

offence u/s 159 of the Act, which is punishable u/s 162 of the Act. In that regard, show cause notice was issued on 13.12.2006. That as per the

Section 162 of the Act, every officer of the company who is in default shall be punishable with the fine. The offence u/s 159 of the Act is a

continuing one within the meaning of Section 472 of the Code of Criminal Procedure and therefore no question of limitation arises. 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. 35 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. 35 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. 23684 of 2007 is allowed.

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