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(1991) 07 MAD CK 0035

In the Madras High Court

Case No : Criminal Miscellaneous Petitions No''s. 2978 and 2981 of 1989

A. Gnanadurai — APPELLANT

Vs

Registrar of Companies — RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:
Companies Act, 1956 — Section 220, 5
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1992) 75 CompCas 243

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : A.K. Mylsamy, for the Appellant; K. Ilias Ali, for the Respondent

Judgement

Pratap Singh, J.—The second accused in C.C. No. 999 of 1988 and C.C. No. 1000 of 1988 on the file of the Additional Chief

Metropolitan Magistrate (E.O.I.), Egmore, Madras, has filed these two petitions u/s 482, Criminal Procedure Code, praying to call for the records

relating to the aforesaid C.C. No. 999 of 1988 and C.C. No. 1000 of 1988 and quash the same.

2. In C.C. No. 999 of 1988, the respondent has filed the complaint against Ramamurthy Metal Decorating Industries Ltd., the petitioner herein,

Subash Chandra Bose and Ramamurthy arraying them as accused Nos. 1 to 4 u/s 220 of the Companies Act, 1956. The allegations in it are

briefly as follows :

The first accused was incorporated as a company under the Companies Act, 1956. It is represented by accused Nos. 2 to 4 who are directors of

the company, according to the particulars filed in the office of the complainant. According to section 220 of the Companies Act, 1956, the

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company and its directors are under a statutory obligation to file with the Registrar of Companies, three copies of the balance-sheet and profit and

loss account in the prescribed form, duly placed in the annual general meeting and, in case no annual general meeting was held, within 30 days of

the due date of the annual general meeting. The balance-sheet and profit and loss account of the company, as on December 31, 1985, were

required to be placed in the annual general meeting by a day not later than June 30, 1986, viz., within six months of the close of the financial year

and three copies of the balance-sheet were required to be filed in the office of the complainant not later than July 30, 1986, viz., within 30 days of

holding the annual general meeting and, in case no annual general meeting was held, within 30 days of the due date of the annual general meeting.

3. The accused-company has not filed the copies of the balance-sheet and profit and loss account with the complainant. The complainant issued a

show-cause notice to accused Nos. 1 to 4 on July 19, 1988. In spite of issue of show-cause notice, the accused have wilfully and knowingly

allowed these defaults to continue and hence are liable for prosecution for default within the meaning of section 5 of the Companies Act, 1956. The

default commenced on July 31, 1986, and is a continuing offence within the meaning of section 472, Criminal Procedure Code. Hence the

complaint.

4. The respondent has filed the complaint in C.C. No. 1000 of 1988 on the file of the Additional Chief Judicial Magistrate (E.O.I) Egmore,

Madras, against the very same four accused u/s 220 of the Companies Act, 1956. This complaint is in respect of non-filing of copies of the

balance-sheet and profit and loss account of the company as on December 31, 1986, which were required to be placed in the annual general

meeting by a day not later than June 30, 1987.

5. Mr. A. K. Mylsamy, learned counsel appearing for the petitioner, would contend that the petitioner was not a director on the company during

the period for which the balance-sheet and profit and loss account of the company were to be filed before the respondent. It is his contention that

the company had three directors, and one-third of the board of directors are to retire each year by virtue of the provisions of the Companies Act

and the petitioner had retired from directorship during the relevant period and

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hence he is not liable. In this regard, he relies upon Company

Petition No. 156 of 1988 in the High Court of Judicature at Madras in which the petitioner herein and Vairaprakasam have filed a petition against

accused Nos. 1 to 3 and two others, arraying them as respondents Nos. 1 to 5 in which allegations are made that the annual general meeting of the

company was not convened during this period. In para 13 of this petition, the petitioners have stated that the company has not convened or held

any annual general meeting for the years ending December 31, 1985, December 31, 1986, and December 31, 1987, and by virtue of not holding

the annual general meetings within six months from the closure of its financial year, viz., for the above four (sic) years, as on date, there is no board

of directors as they have vacated office by reason of the annual general meeting not having been held. It would be relevant to note that the

complaints against the petitioner in C.C. No. 999 of 1988 and in C.C. No. 1000 of 1988 were filed on October 13, 1988, whereas this Company

Petition 156 of 1988 was filed only in December, 1988. The filing of this company petition was after the launching of the prosecution in C.C. No.

999 of 1988 and C.C. No. 1000 of 1988. That apart, the mere allegation in this company petition by itself is not sufficient evidence and cannot be

acted upon. In both the complaints, the positive allegations are to the effect that accused Nos. 2 to 4 are directors of the company, according to

the particulars filed in the office of the complainant. If the petitioner had retired from the directorship, by virtue of the provisions of the Companies

Act during the relevant period, the petitioner can very well prove it during the course of trial and get himself acquitted. It cannot be presumed that

the petitioner is no longer a director in view of the positive allegation that he is a director according to particulars filed in the office. The complaints

do positively make an averment that accused Nos. 2 to 4 were the directors of the company as per the particulars filed in the office. If that be so,

that would be sufficient to fasten liability for non-filing of the returns enjoined upon them u/s 220 of the Companies Act. If it is proved during the

course of evidence that the petitioner was not a director during the relevant period, he can take advantage of the same. But that is a factor which

would come to the surface only at the time of trial. The claim that the petitioner had retired from the board of directors is a fact to be established

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and proved by evidence. In the face of the positive allegations made in the complaint, we cannot presume that the petitioner had retired from the

directorship. Whether any annual general meeting was convened or not is also a fact to be brought forth in evidence. That cannot be presumed. In

view of the above, I am clear that, in the face of the positive allegation that respondents Nos. 2 to 4 are shown as directors as per the particulars

filed with the respondent, no such presumption can be drawn that the petitioner did not continue to be a director during the relevant period. I do

not find any legal infirmity in the complaint. In the ruling in A. Anantalakshmi Ammal v. Indian Traders and Investments Ltd. [1952] 22 Comp Cas

324, it was held that directors due to retire at the next annual general meeting ceased to be directors after last day on which the meeting is due. A

director may retire but at the same time, he can be re-elected. That is, simply by saying that he would retire by the end of that year, the complaints

cannot be quashed when there are positive allegations that he is a director as per the particulars submitted by the company. Looking at the case

from angle, I am clear that these complaints cannot be quashed in limine at the threshold. It is for the petitioner to establish during the course of the

trial that he had retired and that there was no re-election.

6. In view of the above, both the petitions are dismissed.

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