(2014) 10 MAD CK 0060

In the Madras High Court

Case No : Criminal O.P. No. 9301 of 2007

G. Sailu APPELLANT

Vs

Securities and Exchange Board of India RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 12(1B), 24(1)

Citation : (2015) 130 SCL 82

Hon'ble Judges : S. Nagamuthu, J.

Bench : Single Bench

Advocate : S. Ratnakaran, for the Appellant; R.M. Shivakumar, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.?The petitioner is a third accused in C.C. No. 37 of 2004, on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai. The respondent is the complainant in the case. The said case was instituted on a private complaint alleging that the accused in the said case, including the petitioner, have committed offence punishable under Section 24(1) of the Securities and Exchange Board of India Act, 1992. In the said private complaint, the first accused is a company, known as Vipra Farms (India) Ltd., and accused Nos. 2 to 6 are stated to be the Directors of the said company. Seeking to quash the said proceedings, so far as it relates to the petitioner is concerned, the petitioner has come up with this petition. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and I have also perused the records carefully.

2. According to the allegations in the complaint, the Securities and Exchange Board of India (hereinafter referred to as ''SEBI''), in the year 1999 notified Regulations for the regulation of the activities of collective investment scheme titled as Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999. As per the said Regulations, for commencing

collective investment scheme, one should apply for registration with SEBI and obtain such a registration in terms of Regulation 73(1) of the said Regulations. But the first accused company did not make any such application seeking registration and thus, the scheme in violation of Section 12(1B) of the Securities and Exchange Board of India Act, 1992 and Regulation 5(1) read with Regulation 68(1), 68(2), 73 and 74 of the Securities and Exchange Board of India Collective Investment Scheme and Regulations, 1999.

3. It is contended by the petitioner that he resigned from the company from the post of Director as early as on 18.11.1998 itself. Thus, as on the date of coming into force of Regulations in the year 1999, the petitioner was not a Director of the first accused company and therefore, the prosecution launched against him is not sustainable. In this regard, the learned counsel has produced the proceedings of the Assistant Registrar of Companies, Hyderabad, wherein it is clearly stated that the petitioner resigned as a Director of the company in question on 18.11.1998 itself.

4. Learned counsel appearing for the respondent would oppose this petition. According to her, a notice was issued to the first accused company by the respondent herein, calling upon the company to give the particulars of the Directors of the company. In the reply, it was informed to the respondent that the petitioner was also a Director of the company. It is based on the said information furnished by the first accused company, the prosecution was launched against the petitioner also.

5. I have considered the above submissions and to a specific query raised to the learned counsel for the respondent as to whether any individual notice was issued to the petitioner to ascertain whether he was a Director of the first accused company during the relevant time, the learned counsel submitted that no such notice was issued.

6. It may be true that the first accused company had given information that the petitioner was also a Director of the company during the relevant time, but the respondent ought not have been satisfied with the said information, instead, the respondent ought to have verified with the Registrar of Companies before launching the prosecution. Thus, the respondent has failed to do so. The proceedings of the Assistant Registrar of Companies, which has been produced before this Court, shows that the petitioner was not a Director of the company with effect from 18.11.1998. Thus, it is crystal clear that the petitioner was not a Director of the first accused company during the relevant time in the year 1999, when the Regulation came into force and therefore, the prosecution of the petitioner is not sustainable. In the result, this criminal original petition is allowed and the case in C.C. No. 37 of 2004, on the file of the XXHI Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed so far as the petitioner/third accused is concerned.

