Chandy Mathew Vs. Assistant Registrar of Companies and ors.

Chandy Mathew Vs. Assistant Registrar of Companies and ors.

SooperKanoon Citation : sooperkanoon.com/724080

Court : Kerala

Decided On : Jan-31-2007

Reported in : (2007)2CompLJ61(Ker); [2007]76SCL471(Ker)

Judge : K.R. Udayabhanu, J.

Acts : Companies Act, 1956 - Sections 209, 209A, 209(1), 211 and 628; Income Tax Act, 1961; Wealth Tax Act, 1957; Foreign Exchange Regulation Act, 1973

Appeal No. : Crl. M.C. Nos. 3906 of 2005 in 4993 and 5001 of 2003

Appellant : Chandy Mathew

Respondent : Assistant Registrar of Companies and ors.

Advocate for Def. : Dinesh R. Shenoy, Addl. CGSC

Advocate for Pet/Ap. : Joseph Markose, Adv.

Disposition : Petition allowed

Judgement :
ORDER

K.R. Udayabhanu, J.

1. The petitioner in Crl MC No. 4993/2003 and the petitioner in the Crl MC No. 5001 of 2003 is the Managing Director of Duroflex Coir Industries Ltd, a company

incorporated under the Companies Act, 1956, against whom criminal proceedings have been initiated vide ST No. 84/2000 in the Court of Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam, for the offence under Section 211 of the Companies Act 1956 (Crl MC 4993/2003) and for the offence under Section 209 of the Companies Act vide ST No. 85/2000 and against the above petitioner and another director have filed MC No. 3906/2005 with respect to the proceedings initialed against them for the offence under Sections 628 and 209(1) of the Companies Act vide ST 79/2000. The petitioner has sought for setting aside the proceedings initiated, as, according to them, the violation alleged are covered by the immunity clause contained in the Voluntary Disclosure of Income Scheme, 1997 (hereinafter mentioned as VDIS). It is pointed out that Section 64 of the VDIS provides for remittal of income-tax on the income declared by any person in accordance with the provisions of Section 65. Section 68 mandates that, apart from payment of the tax, the amount of voluntarily disclosed income has to be credited by the declarant in his books of account and such credit is to be intimated to the assessing officer. Further, Section 68 provides that the amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Income-tax Act. Section 71 of the VDIS provides immunity against prosecution under the Income-tax Act, Wealth-tax Act, Foreign Exchange Regulation Act, 1973 and Companies Act, 1956, in respect of declarations made under Section 64 of the VDIS. It is the case of the petitioners that it was in pursuance of the VDJS that the disclosed income for the previous years were incorporated in the concerned books of account and, accordingly/remitted the tax due and hence thereafter initiation of criminal proceedings are in violation of Section 71.

2. The Assistant Registrar of Companies has filed a counter statement in Crl MC No. 4993/2003 as well as in Crl MC No. 3906/2005. It is contended that Section 71 of the VDIS only provides that nothing contained in any declaration made under Section 64 shall be admissible against the declarant for the purpose of any proceedings relating to imposition of penalty or for the prosecution under the Income-tax Act, etc. According to the respondent, the section only says that the declaration made shall not be used as evidence against the declarant. According to the respondent, it was on independent inspection of the books of accounts, as

provided under Section 209A of the Companies Act, that the inspecting officer on his inspection in 1999 unearthed the non-disclosure of income, etc., and deposits amounting to Rs. 89,77,467 and that the same is not reflected in the balance sheet of the company as at 31.12.1997 and, hence, Section 211 is violated. Similar is the contention with respect to the infraction of Section 209 of the Companies Act, as per the counter statement filed in Crl MC 5001 of 2003.

3. I find that the contention of the respondent/Assistant Registrar of Companies cannot be sustained. The very purpose of immunity clause contained in Section 71 is to avoid prosecution for violation of the provision on voluntarily disclosing the income and remitting the tax. After declaring the income as per the scheme pursuant to the provisions of the VDIS and incorporating the details in the records initiating the prosecution is against the very purport of the scheme. I find that the prosecution launched against the petitioners vide ST Nos. 84/2000/85/2000 and 79/2000 in the Court of Additional Chief Judicial Magistrate (Economic Offences), Ernakulam, cannot be sustained and the same are herewith quashed. The Crl MCs are allowed accordingly.