Cri.Case No.9984/17

:: Order below Ex.1 ::

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Appearance		
Complainant-side	:	Ld.Company Prosecutor Vipalben Solanki

(1) Heard, Perused the case-papers and relevant provisions of Law.

It is required to be note that earlier in many cases of cases under companies act, on basis of plead guilty by accused, this court was pleased to disposed of the cases by imposing appropriate fine but this issue, i.e. retroactive effect of amended legislation would not decided by this court.

(2) The ROC, Gujarat has filed this complaint against accused for the alleged offence under ***Sec.137 inwhich penal provision is given in Sec.137(3)*** of Companies Act, 2013.

The **Companies Amendment Act, 2020 came into force on 21st December, 2020**, reduced the severity of the punishment prescribed in the aforesaid offence and as a result of this amendment, contraventions now attract only penalty which is required to be adjudicated by an officer appointed under Section-454 of Companies Act, 2013, hence, violation of the offence alleged is no longer triable by Magistrate. Since the rigor of the law has been mitigated, the beneficial legislation should be applied in favour of the accused or not.

(3) Ld. Company Prosecutor has submitted that at the time of filing complaint the offence was not decriminalised, hence, request the Court to decide the matter in the best interest of Central Govt.

(4) In regard to the above factual aspects, the following provision appears to be pertinent.

Sec.274 of BNSS

When in a summons-case the accused appears or is *brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge:*

Provided that if the Magistrate considers the accusation as groundless, he shall, after recording reasons in writing, release the accused and such release shall have the effect of discharge.

Hence, in BNSS Sec. 274 lays down procedure when alleged charge seems to be groundless.

(4.1) Furthermore, Section 463 of the Companies Act, 2013 confers upon the Court the authority to grant relief in specified circumstances, which is in pari materia with Section 633 of the Companies Act, 1956. which is as under.

Section 463. Power of court to grant relief in certain cases

1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that ***<u>he has acted honestly and reasonably</u>****, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit:*

Provided *that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.*

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No court shall grant any relief to any officer under sub-section (1) or sub-section(2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why

such relief should not be granted.

(4.2) On this issue, following judgment of **<u>Hon'ble CALCUTTA HIGH COURT</u>** is relavent. which is as under.

1984 (0) AIJEL-WB 513160
(Sitaram Biyani Versus Registrar Of Companies)

" The learned Magistrate is directed to consider the application of the accused petitioner under Sec.633 of the Companies Act filed before this court on April 21, 1978, in the light of the observations made above and to record his findings on the points noted. While considering the above petition, the learned Magistrate will pay his attention to the copies of correspondence and other documents annexed with the said petition only".

(4.3) Further, In **2011 (0) AIJEL-DL 1345856 (S.K.Bhalla Versus State) Hon'ble DELHI HIGH COURT** has held that,

14. The facts of this case are distinct from the facts of Adalat Prasad Case (supra). In Adalat Prasad case (supra), learned Metropolitan Magistrate had recalled the summoning order by allowing the application under Section 203 Code of Criminal Procedure after the issue of process under Section 204 of the Code of Criminal Procedure. However, in the instant case, Respondents No. 2 to 4 have been discharged by the learned Trial Court at the stage of serving of notice under Section 251 of the Code of Criminal Procedure. At this subsequent stage, learned Metropolitan Magistrate was of the view that the charge sheet/complaint did not disclose necessary ingredient of the offence under Section 509 IPC, as such, he discharged the Respondents No. 2 to 4 for the commission of abetment of offence under Section 509 IPC.

15. Section 251 of the Code of Criminal Procedure deals with the stage subsequent to issue of process under Section 204 Code of Criminal Procedure in a summons trial case. This section casts a duty upon the Magistrate to state to the accused person the particulars of offence allegedly committed by him and ask him whether he pleads guilty. This can be done by the Magistrate only if the charge sheet/ complaint/ preliminary evidence recorded during enquiry disclose commission of a punishable offence. If the charge sheet/complaint does not make out a triable offence, how can a Magistrate state the particulars of non-existing offence for which the accused is to be tried. Therefore, it is inherent in Section 251 of the Code of Criminal Procedure that when an accused appears before the Trial Court pursuant to summons issued under Section 204 Code of Criminal Procedure in a summons trial case, it is bounden duty of the Trial Court to *carefully go through the allegations made in the charge sheet/complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the armative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty, otherwise, he is bound to discharge the accused.*

(5) Furthermore, according to the above judgments, if the legislation has reduced the gravity of any subjective law, the benefit of such reduction should extend to the accused in pending cases where the offense is described under the old Act, provided that the offense under the new Act is substantially the same. In the present case, following the amendment in 2020, the term 'penalty' has replaced word 'fine,' and Section 454 now outlines the entire procedure for the imposition of a penalty by the adjudicating officer. The complainant has not submitted their written submissions as to whether the judgment of the Hon'ble Madras High Court has been followed or not.

(6) In **T.Barai V. Henry Ah Hoe and Another (1983)1 SCC 177, Hon'ble Supreme Court** has held that,

Para 22. It is only retroactive criminal legislation that is prohibited under Art. 20 (1). The prohibition contained in Art. 20 (1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such expost facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16 (1) (a) of the Act, there is no reason why the accused should not have the benet of such reduced punishment. ***The rule of benecial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law****.*

(7) In *Nemi Chand v. State of Rajasthan* (2018) 17 SCC 448 and *Trilok Chand v. State of Himachal Pradesh* (Cri. Appeal No. 1831/2010), the Hon'ble Supreme Court has laid down an identical view.

(8) In *B. Kannan v. The Deputy Registrar of Companies, Chennai* (Cri. O.P. No. 2735/2017), the Hon'ble Madras High Court has held as follows. The relevant paragraphs of this judgment are as under.

> ***13. The Hon'ble Apex Court in the case of B.Manna vs. State of West Bengal reported in AIR 1955 SC 84, which was quoted with approval by the Hon'ble Apex Court in T.Barai's case (cited supra), held that where the fresh legislation is brought on the same subject, the line of enquiry would be not whether the new Act expressly keeps alive, old rights and liabilities but whether it manifests an intention to destroy them. The new Act in the instant case i.e., the Companies (Amendment) Act, 2019 clearly manifestly an intent to treat the violations which are only technical to be adjudicated by a in-house process. Further, Section 454 of the Companies Act also makes it clear that where after adjudication and person either does not pay penalty or fails to comply with the order of adjudication, he is liable for punishment, either fine or imprisonment. Therefore, the object of the amendment Act is to give an opportunity to the person to comply with the provision and only after the order of adjudicating officer directing the compliance or his payment of penalty is violated, it would become an offence.***
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> ***<u>14. Therefore, we are of the view that the intention of the Parliament is very clear and the since of the Amendment Act 2020 mollifies the rigour of punishment the beneficial construction has to be applied in favour of the accused in pending prosecutions and all the prosecution has to be withdrawn and transferred to the adjudicating authority appointed under Section 454 of the Companies Act for further proceedings in terms of the said provision.</u>***
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> *15. In the light above decision, this Court is of the view that it may not be necessary to deal with the other contentions of the parties.*
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> *16. In fine, the complaint in EOCC No.46 of 2016 Additional Chief Metropolitan Magistrate Economic Offences No.I, at Egmore, Chennai is transferred to the adjudicating authority appointed under the Companies Act to adjudicate the contravention committed by the petitioner in terms of Section 454 r/w 165(6) of the Companies Act.*

17.With the above observations, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Considering the ratio laid down by the Hon'ble High Court of Madras, it is evident that the rule of beneficial construction mandates that even ex post facto laws of this nature should be applied to mitigate the rigor of the law, and such application would not prejudice the prosecution, as the prosecution has a remedy available under Section 454 of the Companies Act, 2013.

(9) Hence, in view of the above circumstances, there is no reason not to follow the ratio laid down by the Hon'ble Madras High Court in *B. Kannan v. The Deputy Registrar of Companies, Chennai* (Cri. O.P. No. 2735/2017). Therefore, based on the aforesaid discussion and circumstances, I hereby pass the following order in the interest of justice.

:: O r d e r ::

The present case instituted for the alleged violation of the Companies Act, 2013, is hereby disposed of, in light of the ratio laid down by the Hon'ble Madras High Court in *B. Kannan v. The Deputy Registrar of Companies, Chennai* (Cri. O.P. No. 2735/2017) with a view to adjudicate the issue under Sec.454 of Companies Act, 2013 by the adjudicating officer of the Registrar of Companies.

This order will not preclude ROC to initiate adjudicatation proceedings against present Accused in accordance with the law.

Any dictum of Hon'ble Apex court shall remain binding In the case of B.Kannan V. The Deputy Registrar Of Companies, Chennai (Cri.O.P.No.2735/2017), if so decides by the Hon'ble Court.

Signed and pronounced in open Court today.

Dt.08-03-2025.
LA-Sp.Sitting

[Sanat Jayantilal Panchal]
Addi.Chief Judicial Magistrate,
Ahmedabad (City). Code : GJ00864.