

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

CRL.REV.PET NO. 3194 OF 2003

AGAINST THE ORDER IN CC 34/1997 OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE (E&O), ERNAKULAM

REVISION PETITIONERS/ACCUSED NOS. 2 TO 5:

- 1 K.N.NAIDU
2511, 17TH MAIN, 26TH CROSS,
BANA SHANKARI II STAGE,
BANGALORE-560 070
- 2 PUSHPA NAIDU
W/O K N NAIDU
2511, 17TH MAIN, 26TH CROSS,
BANA SHANKARI II STAGE,
BANGALORE-560 070
- 3 CHANDRA SINGH N R
341/1, 1ST FLOOR, 13-B CROSS,
VYALIKAVAL, BANGALORE-560 018.
- 4 ASHOK D ENGINEER
61, APPU RAO ROAD,
6TH MAIN CHAMRAJPET, BANGALORE-560 018.

BY ADVS.
K.N.NAIDU (PARTY)
R.SANJITH

RESPONDENTS/ COMPLAINANT:

- 1 REGISTRAR OF COMPANIES, KERALA
OFFICE OF THE REGISTRAR OF COMPANIES,
KERALA, M G ROAD, ERNAKULAM
- 2 STATE OF KERALA
REP: BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
BY ADV S.MANU (DSGI)
SUVIN.R.MENON DSGI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 12.04.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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ORDER

Dated this the 12th day of April, 2023

This Crl.R.P. has been filed against the order of the Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam (for short, 'the Court below') framing charge in C.C.No.34/1997 vide Court charge dated 04/09/2003.

2. The revision petitioners who are the Directors of a Public Limited Company by name "ABN Granites Ltd." incorporated under the Indian Companies Act are the accused Nos. 2 to 5 in C.C.No.34/1997 at the Court below. The company was initially registered at Bangalore on 29/05/1990. The certificate of commencement of operation was issued to the company on 18/12/1991. The company was subsequently shifted to Kerala on 18/12/1995.

3. The respondent No.1, the Registrar of Companies, Kerala, filed a private complaint against the revision petitioners and the Managing Director of the company, who is the accused No.1 alleging offence under Section 67 of the Indian Companies Act, 1956. The precise allegation is that even though the certificate of commencement of business was

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obtained by the company only on 18/12/1991, it started receiving share applications from July, 1991 onwards. It is further alleged that the brochures issued by the company during September, 1991 show that the company commenced production and export of raw granites but the certificate of commencement of business was issued only on 18/12/1991.

4. The Court below after hearing the prosecution and taking the evidence framed charge against the revision petitioners and the accused No.1 for the offence under Section 68 of the Indian Companies Act, 1956. Challenging the said charge, the revision petitioners have approached this Court.

5. I have heard Sri.R.Sanjith, the learned counsel for the revision petitioners and Sri.Suvin.R.Menon, the learned DSGI.

6. The learned counsel for the revision petitioners submitted that the revision petitioner Nos. 1 and 2 are no more. The learned counsel also submitted that the accused No.1 also is no more.

7. Section 68 of the Indian Companies Act reads as follows:

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“68. Penalty for fraudulently inducing persons to invest money. Any person who, either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into-

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting shares or debentures; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by reference to fluctuations in the value of shares or debentures;

shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to ten thousand rupees, or with both.”

8. PW1 was examined on the side of the prosecution.

At the time of filing the complaint, he was working in the office of the Registrar of Companies. He gave evidence in tune with the averments in the complaint. He admitted during cross-examination that no records are produced at the Court below in order to establish that revision petitioners have issued any prospectus or any document resembling any prospectus to the public. No evidence has been adduced at the Court below to

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establish that revision petitioners have invited shares from the public so as to attract violation of Section 67 of the Indian Companies Act. PW1 in cross-examination further admitted that there is no evidence at least to *prima facie* establish that revision petitioners have any involvement in the issuance of brochures as well. No evidence has also been produced by the complainant to prove that the Board of Directors have taken any decision to issue prospectus before the commencement of the business with the company. The entire allegation is against the accused No.1, who is the Managing Director. There is no allegation to attract the offence against the revision petitioners who are only Directors. There is absolutely no material on record that the petitioners knowingly or recklessly made any statement, promise or forecast which is false, disruptive or misleading or by dishonest concealment of material facts induced any person subscribing to shares of the company so as to attract the offence under Section 68 of the Indian Companies Act. That apart, it is submitted by the learned counsel for the revision petitioners that the company has already been wound up and is no longer in operation. As

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stated already, the Managing Director of the company against whom the entire allegations were made is no more. In these circumstances, I am of the view that no purpose will be served in proceeding further against the matter.

Accordingly, the charge framed by the court below against the revision petitioner Nos. 3 and 4 is hereby set aside. The Crl.R.P. is allowed as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

APA