



2025:KER:25744

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 26TH DAY OF MARCH 2025/5TH CHAITHRA, 1947

CRL.MC NO. 5483 OF 2022

AGAINST THE ORDER/JUDGMENT IN ST NO.64 OF 2022 OF ADDITIONAL CHIEF

JUDICIAL MAGISTRATE (E&O), ERNAKULAM

PETITIONERS/ACCUSED 1 TO 3:

- 1 M/S RESFEER INFOSOLUTIONS PRIVATE LIMITED,
KRISHNA, TC 7/727, MARUTHENKUZHI,
THIRUVANATHAPURAM, PIN - 695030
REPRESENTED BY INDIRA BAI CHELAPPAN,
 - 2 KAVITHA SOMASEKHARAN,
AGED 38 YEARS, TC 21/570(2),
SARANYA, SWAMYVIVEKANANDA LANE, KARAMAN P.O., TRIVANDRUM,
PIN - 695002
 - 3 INDIRA BAI CHELAPPAN,
AGED 82 YEARS
TC 7/727, KRISHNA, MARUTHENKUZHI,
THIRUVANATHAPURAM, PIN - 695030
- BY ADVS.
EBIN MATHEW
P.J.MATHEW
AKHILA SHOJI

RESPONDENT/COMPLAINANT:

REGISTRAR OF COMPANIES, KERALA
COMPANY LAW BHAWAN, BMC ROAD, THRIKKAKARA P.O., ERNAKULAM,
PIN - 682021

DSGI IN CHARGE T.C. KRISHNA.
SMT. MINI GOPINATH FOR CGC.
SRI. M.C. ASHI, PP.



CRL.MC NOS. 5483, 5769 & 6691 OF 2022

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THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
26.03.2025, ALONG WITH CRL.MC.5769/2022 AND CONNECTED CASES, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:



HIGH COURT OF KERALA
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**ORDER****Dated this the 26th day of March, 2025**

Petitioners are the accused in S.T Nos.64, 47 and 81 of 2022 pending on the files of the Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam. The case originated from a complaint filed by the respondent alleging commission of the offence under Section 454(8) of the Companies Act ('the Act' for short). The essential facts, as narrated in Crl.M.C No.5483 of 2022, are as under;

The 1st petitioner is a company registered under the Companies Act of 2013. As per Section 10A of the Act, as amended with effect from 02.11.2018, a company incorporated after the amendment and having a share capital cannot commence business, unless a declaration in Form No. INC-20A is filed by any one of its Directors within 180 days of the date of incorporation of the company. In the petitioner's case, there occurred a short delay in filing the declaration of commencement of



business of the company. Hence, proceedings under Section 454(3), for realisation of penalty, were initiated against the company and its Directors. Thereupon, the petitioners preferred appeals under Section 454(5) against the order imposing penalty. As the order imposing penalty was passed on 20.01.2020, petitioners were not able to file appeal against the order, in time in view of the national lock down imposed for preventing the spread of the COVID-19 pandemic. Hence, the appeal was submitted along with a petition for condonation of delay. Without considering the explanation offered for the delay, the delay petition and consequently the appeal, were dismissed. The petitioners challenged that order before the High Court and the writ petitions were disposed of as per Annexure5 judgment, setting aside the impugned order and directing reconsideration of the appeal on merits, after affording the petitioners an opportunity of hearing. Pending hearing of the appeal, the respondent filed a



complaint under Section 454(8) of the Act. Hence, this Crl.M.C.

2. Learned Counsel for the petitioners submitted that the complaint under Section 454(8) is not maintainable, as the appeals filed under Section 454(5) are pending consideration before the appellate authority. It is pointed out that the appeals are not taken up for hearing, since the system is not enabled to take up appeals which were dismissed once. It is contended that the complaints under Section 454(8) can be filed only after expiry of a period of 90 days from the date of receipt of a copy of the order issued under sub-section 3 or sub-section 7 of Section 454. In the case at hand, the complaints are filed based on the dismissal of the appeals, without taking note of the fact that the appellate orders are set aside by this Court and the appeals restored to file.

3. According to the learned Senior Panel Counsel, going by the wordings of Section 454(8), a



complaint can be filed if the order under Section 454(3) is not complied within 90 days. In the cases under consideration, the complaints were filed after expiry of 90 days from the date of dismissal of the appeals and were maintainable at that point of time.

4. From the arguments advanced, the following undisputed facts emerge;

The petitioners had challenged the orders under Section 454(3) by filing appeals under Section 454(5). The appeals were dismissed on the ground of delay. The writ petitions filed challenging those orders were allowed by this Court and the appeals directed to be reconsidered on merits. The appeals are yet to be considered.

5. Going by Section 454(8), the cause of action for filing a complaint would arise only after 90 days of the order, if no appeal is preferred within that time and if an appeal is preferred, after 90 days of the order passed in the appeal. Indisputably, the appeals



filed by the petitioners are still pending consideration. Being so, the complaints alleging non-compliance of the original orders are not maintainable.

The Criminal Miscellaneous Cases are hence allowed and Annexure6 complaints and all further proceedings thereon, quashed. The respondent is at liberty to file fresh complaints, if so warranted.

Sd/-

**V.G.ARUN
JUDGE**

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**HIGH COURT OF KERALA
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APPENDIX OF CRL.MC 5483/2022

PETITIONER ANNEXURES

- ANNEXURE1** A TRUE COPY OF THE DECLARATION FOR
COMMENCEMENT OF BUSINESS FILED IN FORM NO
INC-20A
- ANNEXURE2** A TRUE COPY OF THE ORDER NO ROC/S-454/10A/
/2020 DATED 20/01/2020 PASSED BY THE
RESPONDENT
- ANNEXURE3** A TRUE COPY OF THE APPEAL FILED BY THE
PETITIONERS IN THE PRESCRIBED FORM ADJ
- ANNEXURE4** A TRUE COPY OF ORDER DATED 22/10/2021 ISSUED
BY THE REGIONAL DIRECTOR, MINISTRY OF
CORPORATE AFFAIRS, CHENNAI
- ANNEXURE5** A TRUE COPY OF THE JUDGMENT DATED 08/03/2022
IN WPC 3969 OF 2022 OF THIS HON'BLE COURT
- ANNEXURE6** CERTIFIED COPY OF COMPLAINT FILED BY THE
RESPONDENT WHICH WAS NUMBERED AS ST 64/2022,
ADDITIONAL CHIEF JUDICIAL MAGISTRATE
(ECONOMIC OFFENCES) COURT, ERNAKULAM

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