

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

(Orders Reserved on : 21.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.898 of 2016

and

M.P.No.1 of 2007

Securities and Exchange Board of India
Mittal Court,
'B' Wing, I Floor,
224 Nariman Point,
Mumbai, represented by
A.Chandrasekara Rao.

.... Petitioner/Complainant/
Respondent

Vs.

Dinesh Dalmia

... Respondent/Accused/
Petitioner

Prayer : Criminal Revision Cases filed under Sections 397 & 401 of the Code of Criminal Procedure, against the judgment dated 22.03.2007 passed by the learned I Additional Sessions Judge, Chennai, in Crl.R.C.No.234 of 2006.

For Petitioner : Mr.S.Muktha
for Mr.V.Achuthan
For Respondent : Mr.R.John Sathyan

सत्यमेव जयते

ORDER

This Criminal Revision Case is directed against the judgment dated 22.03.2007 passed by the learned I Additional Sessions Judge, Chennai, in Crl.R.C.No.234 of 2006.

2. The facts leading to the criminal revision case are, briefly, as follows:-

The revision petitioner as a complainant has filed a private complaint under Section 200 of Cr.P.C. read with Section 24 (1) of the Securities and Exchange Board of India Act, 1992, against the respondent and another before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2776 of 2003, to summon the accused and punish them in strictest terms as provided by law. The respondent/accused has filed a bail petition in M.P.No.5002 of 2006 before the

learned XXIII Metropolitan Magistrate, Saidapet, Chennai, and the said petition was dismissed by the learned Magistrate. As against the said order, the respondent/accused had preferred a revision in CrI.R.C.No.234 of 2006 before the learned I Additional Sessions Judge, Chennai, and the I Additional Sessions Judge, by order dated 22.03.2007, after considering the arguments of both sides, granted bail to the respondent/accused by setting aside the order dated 12.10.2006 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in M.P.No.5002 of 2006 in C.C.No.2776 of 2003. As against the said order, the present criminal revision case is preferred by the revision petitioner/complainant before this Court.

3. The learned counsel for the petitioner/complainant would mainly contend that the learned I Additional Sessions Judge, ought not to have granted bail to the respondent/accused, since the alleged offence is punishable with imprisonment upto 10 years and fine or both and hence, the learned I Additional Sessions Judge ought to have dismissed the bail petition filed by the respondent/accused. It is further contended that the learned Sessions Judge has not considered the relevant provisions of the Amended Act. The learned counsel for the petitioner further contended that the learned Sessions Judge ought to have held that the word 'punishable' refers to the maximum punishment provided under law as on the date of complaint and erred in giving a finding that the offence was committed before the date of the amendment and hence the offence would be a non-cognizable and bailable offence as contemplated under Schedule II item (ii) of Cr.P.C. It is also contended that the learned Sessions Judge failed to appreciate the fact that apart from the civil/administrative actions initiated by the Securities and Exchange Board of India (SEBI), some of the criminal cases are also pending against the accused in various Courts across the country which involves thousands of crore rupees. But, the learned Sessions Judge, without application of mind, granted bail to the respondent/accused and hence, the learned counsel prayed that the order passed by the learned Sessions Judge may be set aside and the Criminal Revision Case may be allowed.

4. The learned counsel for the respondent/accused would contend that the learned Sessions Judge, after appreciating the fact that the amendment is not retrospective one and since as per the old Act, the alleged offence is only bailable offence, granted bail to the respondent/accused and there is no infirmity or illegality in the order passed by the learned I Additional Sessions Judge and hence, the learned counsel for the respondent prayed that the Criminal Revision Case may be dismissed.

5. In this case, the revision petitioner has filed a private complaint under Section 24 (1) of the Securities and Exchange Board of India Act, 1992 against the accused before

the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, for the offence said to have been committed by the accused under Section 24 (1) of the Securities and Exchange Board of India Act, 1992.

6. In this case, it is useful to extract the relevant provisions of Sections 26 A to 26 E of the Securities and Exchange Board of India Act, 1992 (As amended by the Securities Laws (Amendment) Act, 2014), which read as follows:-

"[Establishment of Special Courts.

26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.
Offences triable by Special Courts.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Appeal and revision.

26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court.

26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a

Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions.

26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.]"

7. It is well settled law that as per the provisions of Section 26E of the above said Act, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Sessions exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973. It is also admitted on the side of the revision petitioner/complainant that the Amendment Act will not have any retrospective effect in awarding punishment to the accused and the trial has changed from Magistrate Court to Sessions Court. In this case, the learned Magistrate issued only bailable warrant and the bail petition has been filed by the respondent/accused under Section 436 of Cr.P.C. before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, and the said petition was dismissed by the learned Magistrate. Since bailable warrant was issued, the learned Sessions Judge, after considering the facts and circumstances of the case, granted bail to the respondent/accused. Further, it is settled principles of law that the Amendment made in any criminal law will not have any retrospective effect and it having the effect of prospective alone. In the above circumstances, the respondent/accused has filed a bail petition before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, but, the learned Magistrate, without assigning any reason, dismissed the said petition. Thereafter, as against the said order, the respondent/accused had

preferred a revision in CrI.R.C.No.234 of 2006 before the Sessions Court and the learned I Additional Sessions Judge, after considering the entire facts and circumstances of the case, granted bail to the respondent/accused. Hence, there is no infirmity or illegality in the order dated 22.03.2007 passed by the learned I Additional Sessions Judge, Chennai, in CrI.R.C.No.234 of 2006, granting bail to the respondent/accused. This Court finds no reason to interfere with the order passed by the learned I Additional Sessions Judge which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

8. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

1.The I Additional Sessions Judge,
Chennai.

2.The XXIII Metropolitan Magistrate, Saidapet,
chennai.

+1 cc to Mr.R.John Sathyan,advocate,sr.63588

+1 cc to Mr.V.Achuthan,advocate,sr.63358

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