

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 68/2015**

Date of Decision : March 09th, 2016

SECURITIES & EXCHANGE BOARD OF INDIA (SEBI)

..... Petitioner

Through Ms.Pinky Anand, Learned Additional
Solicitor General, Mr.Sanjay Mann,
Ms.R.K. Pillai, Ms.Snidha Mehra
Advocats with Mr.Vivek Yadav,
Officer, SEBI.

versus

STATE (NCT OF DELHI)

..... Respondent

Through Mr.Avi Singh, Additional Standing
Counsel (Crl.) with Ms.Megha Bahal,
Ms.Ananya Mohan Singh, Advocates
for the State.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the “Cr.P.C.”) has been filed by the petitioner seeking striking off/expunction of para 8 of the order dated 29.11.2014 passed by the learned Additional Sessions Judge, Tis Hazari Courts,

Delhi in Complaint Case No.25/2014 titled SEBI v. Timberworld Resorts & Plantations India Ltd. & Ors.

2. The facts, in brief, are that the petitioner-Securities and Exchange Board of India (SEBI) is a statutory regulator under the provision of SEBI Act, 1992. A criminal complaint was filed by the SEBI against Timberworld Resorts & Plantations India Ltd. and its directors before the Court for violation of Section 12(1B) of the SEBI Act and Regulation Nos.5(1) read with 68(1), 68(2), 73 and 74 of the SEBI Regulations, 1999 constituting offence punishable under Section 24(1) read with Section 27 of the SEBI Act. In the complaint, it was alleged that the accused company raised an amount of about Rs.22 crores from general public in violation of the provisions contained in Section 12(1B) of the SEBI Act. Despite the Collective Investment Schemes (CIS) Regulations and public notice dated 18.12.1997, the accused persons had failed to get the CIS registered with SEBI or to wind up the said schemes or repay the amount collected from the investors.

3. Cognizance on the complaint was taken by the learned ACMM on 15.10.2001 and the accused persons were summoned under Section 204 Cr.P.C. On 08.12.2011, accused Rajesh Sud and A.V. Mahindra were declared proclaimed offenders. Vide judgment dated 27.11.2014, the learned Additional Sessions Judge convicted accused company M/s Timberworld Resorts & Plantation India Ltd., accused Ashwani Sud and Sanjeev Sood for the offence punishable under Section 24(1) of the SEBI Act read with Section 27(1) and 27(2) of the SEBI Act. The order on sentence was passed on 29.11.2014.

4. The main contention of the learned ASG for the petitioner is that while passing the order on sentence, the learned Additional Sessions Judge passed some adverse remarks against the SEBI in para 8 of the impugned order. Para 8 of the order reads as under :

“It is also pertinent to state that lethargic approach on the part of Regulator and other law enforcing agencies also encourages such type of persons to induce public at large. Though as per Section 12(1B) of the SEBI Act, such companies were not supposed to raise even a single penny through collective investment schemes unless they obtained a certificate of registration from the SEBI but no immediate action was taken by the SEBI qua the schemes which were launched by the company after insertion of Section 12(1B) in the Act. SEBI had not only taken four years to notify the Regulations but it had also taken unnecessary long time to prosecute the accused persons. Had the SEBI taken the strict action in time against such persons, probably investors would not have lost their hard earned money. Such lethargic approach on the part of Regulator and law enforcing agencies embolden such unscrupulous persons to gather an impression that if they gobbled the hard earned money of common men of this country, law enforcing agency would not be able to apprehend them; or if they be apprehended, they would not be prosecuted; or if they be prosecuted their guilt would not be proved in the Court of law; or if their guilt be proved in the Court of law, they would be dealt with softly and with all leniency; and at the end, they would get only token sentence. But to my mind, now time has come to convey a loud and clear message to such wrongdoers that crime never pays and if their guilt is proved in the Court, they would be dealt with sternly. In my

view, to curb such type of incidents, a clear message is required to be conveyed to the wrongdoers that if their guilt is proved they shall not only have to disgorge the ill-gotten amount but they shall also have to undergo imprisonment.”

5. Learned ASG has argued that there was no delay on the part of SEBI either in framing the Regulations or in initiation of prosecution against the accused company. It is further argued that SEBI was not afforded any opportunity of hearing before passing the adverse remarks against them.

6. I have gone through the judgment of Hon’ble Apex Court in the case of *The State of West Bengal & Ors. v. Babu Chakraborty (2004) 12 SCC 201* in which it was observed that :

“30. Replying to the arguments of Mr. Viswanathan, Mr. Tapas Ray, learned senior counsel, submitted that the operating portion of the impugned judgment clearly brings out the perversity in the judgment. According to him, the strictures that has been passed against the appellants by the Division Bench of the High Court are wholly unjustified and are liable to be expunged. He is right in his submission. In our view, the High Court was not justified and correct in passing observations/strictures against appellants 2 & 3 without affording an opportunity of being heard, and it is in violation of catena of pronouncements of this Court that harsh or disparaging remarks are not to be made against the persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case. Likewise, the directions issued by the High Court to the trial Court to lodge a complaint to the

Magistrate having jurisdiction for prosecuting appellants 2 and 3 for having committed an offence under Section 58 of the Act read with Sections 166 and 167 of the Indian Penal Code is not warranted. The observations made by the High Court are liable to be expunged and accordingly, we expunge the same including the direction to lodge a complaint against appellants 2 & 3.”

Similarly, in *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr. (2011) 12 SCC 689*, it was observed that :

“12. Thus, the law on the issue emerges to the effect that the Court may not be justified in making adverse remarks/passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.”

The Hon’ble Apex Court in the matter of *K, a Judicial Officer AIR 2001 SC 972* observed that :

“18. Reverting back to the case at hand, may be that the learned Metropolitan Magistrate in initiating contempt proceedings and taking cognizance of substantive offences under the Indian Penal Code against the officials of Public Works Department was not properly advised or was at the worst indulging into a misadventure and therefore to the extent of quashing of the proceedings by the High Court we may not find fault and certainly no one has come up to this Court complaining against the merits of that part of the order of the High Court by which criminal

proceedings have been quashed. Nevertheless, the ill advised move or misadventure of the learned Metropolitan Magistrate was neither a misconduct nor an outcome of malice. Though she acted in a way which did not meet the approval of the High Court, the facts and the circumstances of the case point out that her only desire was to make her court room functional. Probably she felt aggrieved, rather agitated, by the apathy of the Public Works Department people who were taking the things too easy unmindful of the practical difficulties faced by the presiding judge occupying the court room and discharging judicial functions. The fact remains that the observations were made by the High Court without affording the Metropolitan Magistrate an opportunity of explaining or defending herself. The remarks were not necessary for the decision of the case by the High Court as an integral part thereof. Animadverting on the conduct of the learned Metropolitan Magistrate was not a necessity for the exercise by the High Court of inherent power or the power of superintendence to quash the proceedings initiated by the learned Metropolitan Magistrate. Expunging of the remarks, as we propose to do, will not affect the reasons for the judgment of the High Court. On the other hand, the remarks have a potential to prejudice the career of the appellant.

7. As per the law laid down by Hon'ble Apex Court in the above referred judgments, it is the law of the land that no observation against any person or authority can be made by any Court without affording an opportunity of hearing to him and without any sufficient cause. It is also a settled proposition that no disparaging remark is to be made against the persons and authorities whose conduct comes into

consideration before Courts of law unless it is necessary for the decision of the case.

8. In view of the above discussion and the law laid down by Hon'ble Apex Court, this Court is of the considered opinion that the remarks passed by the learned Additional Sessions Judge in para 8 of the order dated 29.11.2014 are unwarranted and uncalled for as the same were not necessary for the decision of the criminal complaint. If the said adverse remarks are expunged from the impugned order of the Trial Court, the same would not have any affect on the reasons for the order passed by the Trial Court.

9. In view of the above, the present petition is allowed only to the extent of expunging of remarks made in para 8 of the order dated 29.11.2014 passed by the Trial Court. The Trial Court is directed to delete para 8 from the order dated 29.11.2014.

10. Copy of the order be sent to the Trial Court for compliance.

(P.S.TEJI)
JUDGE

MARCH 09, 2016
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