

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.R.C.No.1005 of 2010

and

M.P.No.1 of 2010

Ganapathy Subramaniam

.. Petitioner/A8

vs.

The Reserve Bank of India
represented by its Authorised Officer,
Mr.R.Parthasarathy
Assistant Manager,
Department of Non-Banking Supervision,
Chennai

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the order of learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, passed in M.P.No.722 of 2010 in E.O.C.C.No.125 of 2001 on 03.08.2010.

For Petitioner : Mr.A.Raghunathan, senior counsel
for Mr.T.I.Ramanathan
For Respondent : Mr.T.Poornam

ORDER

This revision arises against dismissal of a petition seeking discharge in M.P.No.722 of 2010 in E.O.C.C.No.125 of 2001 on the file of learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, under orders dated 03.08.2010.

2. The case in E.O.C.C.No.125 of 2001 on the file of learned Additional Chief Metropolitan Magistrate, E.O.I., Egmore, Chennai, is one alleging offence u/s.45 QA r/w 58 B and 58 C of RBI Act, 1934. Petitioner is arrayed as eighth accused. Petitioner/A8 moved M.P.No.722 of 2010 in E.O.C.C.No.125 of 2001 u/s.245 Cr.P.C. seeking discharge. Court below, under the impugned order, dismissed such petition. Hence, this revision.

3. Heard learned senior counsel for petitioner and learned counsel for respondent.

4. Learned senior counsel for petitioner made a brief submission which found immediate acceptance. Learned senior counsel submitted that the present is a complaint case wherein warrant procedure is adopted since the offence alleged is punishable with imprisonment upto to three years and fine. In the complaint, it had been alleged that petitioner was the Director of first

accused company. PW-1 has also deposed that prosecution was launched against petitioner on the premise that he was a Director. In the course of cross-examination of PW-1, it was established that petitioner never held the capacity of Director of first accused company but was only a Company Secretary thereof. What has not been pleaded cannot be proved. This Court finds itself in agreement with the following observation in decision reported in **2006 Cri.L.J.3228** :

'4.The complaint has to be seen as it has been made and in the same manner in which it has been made. According to the complaint which is at page 32 of the paper book, it is clear that the present petitioner has been arrayed as an accused on the ground that he was the Managing Director of the Company and not as a non-executive Director of the Company as is now being sought to be contended by the learned counsel for the Registrar of Companies. Therefore, when the complainant has made the present petitioner an accused in his capacity as the Managing Director of the Company, the complainant cannot now turn around and attempt to have the accused prosecuted in a different capacity.'

5. For the record, this Court would state the submission of learned counsel for respondent/complainant to be that the offence alleged is one wherein all those who were in charge and responsible to the company could be prosecuted and though not a Director it needed no elaboration that as a

Company Secretary, petitioner would hold such capacity. Further, petitioner has participated and represented the first accused company in proceedings before the Company Law Tribunal. The offences were of continuing nature and as such, no question of limitation arose. It is the submission of learned counsel for respondent that in the circumstances, it would be appropriate to dismiss the present revision and permit respondent to seek amendment of the complaint to reflect the proper position.

The Criminal Revision Case is allowed on the reasoning that what has not been pleaded cannot be proved. In other words, the present is not a decision on the factual merits of the case. If respondent is to contend that no question of limitation arises, it is always open to him to move afresh by way of complaint with requisite and proper pleadings. Connected miscellaneous petition is closed.

17.08.2017

Index:yes/no
Internet:yes
gm

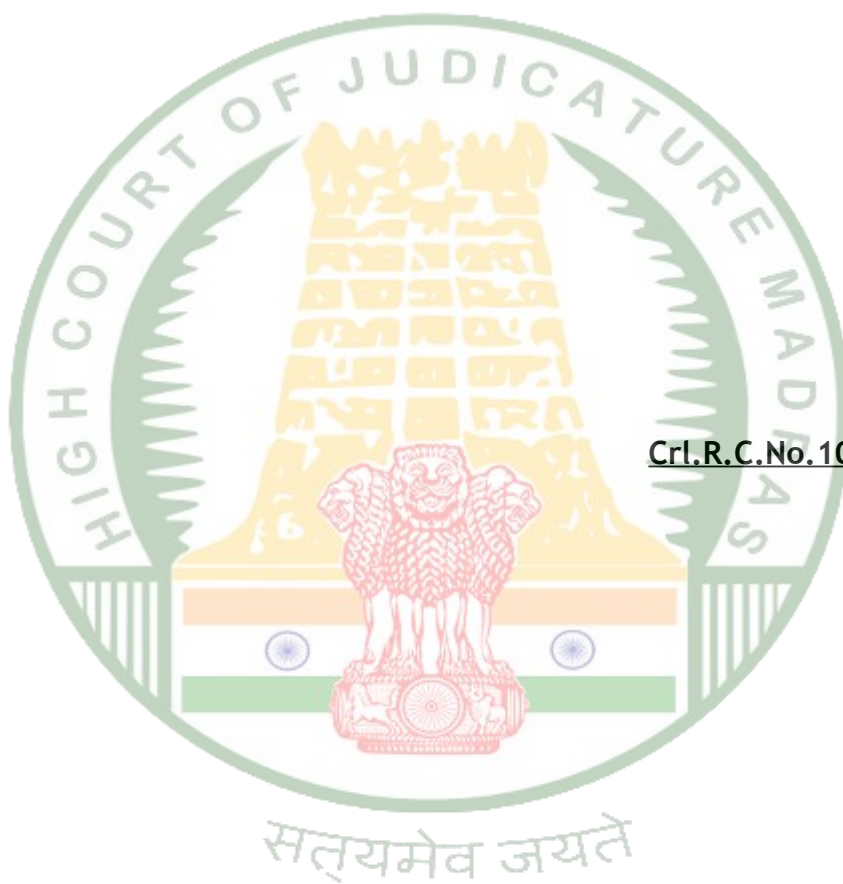
To

The Additional Chief Metropolitan Magistrate,
E.O.I., Egmore, Chennai.

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C.T. SELVAM, J

gm



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