

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.3158 & 11657 of 2011
and
Crl.M.P.Nos.1, 1, 2, 3 of 2011

1.M/s.Brahmaputhra Plantations Ltd.,
Rep. By Ex.Director Jose Mathew.

2.Jose Mathew,
S/o.Mathew.

3.Jolly Jose,
W/o.Jose Mathew. ... Petitioners/Accused in both Petitioner

Vs.

Securities and Exchange Board of India,
Rep. by Assistant General Manager,
U.Venugopal,
Regional Office, D.Monte Building,
No.32, D'Monte Colony, T.T.K. Road,
Alwarpet, Chennai-18.

... Respondent in both the Petitioner

PRAYER in Crl.OP.No.3158 of 2011: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.454 of 2010 on the file of V Fast Track Court, Chennai and quash the same.

PRAYER in Crl.OP.No.11657 of 2011: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to quash the order passed by the XXIII Metropolitan Magistrate at Saidapet, Chennai-15, in C.C.No.8798 of 2002 dated 24.09.2010.

For Petitioners: No Appearance in Both Crl.O.P's
For Respondent : Mr.N.P.Kumar
Special Public Prosecutor in Both Crl.O.P's

C O M M O N O R D E R

The petitioners, who are the accused in S.C.No.454 of 2010 before the learned Additional District and Sessions Judge and

the learned V Fast Track Court, Chennai have filed the above quash petitions to quash the proceedings in S.C.No.454 of 2010.

2.The Crl.O.P.No.11657 of 2011 is filed by the petitioners to quash the order dated 24.09.2010 made in C.C.No.8798 of 2002 rendered by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and committed the C.C.No.8798 of 2002 to the Principal Sessions Court, Chennai for further proceedings. Since the petitioners and the respondent are one and the same and the issue in both the cases are similar, hence, both the cases are dealt by a common order.

3.No representation for the petitioners. The learned counsel for the respondent present. The counsel for the petitioners has not appeared on previous hearings and thereafter, it was listed under the caption "For Dismissal" on 07.09.2018 and today i.e., on 26.10.2018, when the case was taken up for hearing, no representation for the petitioners, since the case is of the year 2010 and it is in the advance stage of trial due to the pendency of the above quash petitions. The case is kept pending in the lower Court, which is adding up to the list of pendency cases. Hence, further adjourning the case for appearance of the petitioner would not serve any purpose. Instead of, it would only pile up to the list of the pendency cases, hence, this Court proposes to dismiss the Criminal Original Petitions on merits.

4.The contention of the petitioners is that, the first petitioner is the company viz., M/s.Brahmaputhra Plantations Limited Company, the 2nd and 3rd petitioners are the Directors of A1 company. The respondent is a Statutory authority created under the provisions of the Securities and Exchange Board of India Act, 1992 (SEBI Act), for the purpose of protection of interest of investors in securities and for the development and for regulating the securities matters and the matters connected therewith or incidental thereto. The respondent regulates the stock exchange through the provisions of Securities Contracts (Regulation) Act, (SCRA), 1956 and Securities Contracts (Regulation) Rules, 1957, SEBI Act.

5.The petitioners, who are in the Plantation Activities on a Commercial Scale Investment, a minimal amount in such ventures and raised a majority of funds from ordinary investors in the absence of any regulatory mechanism. The high returns were promised by these schemes coupled with questionable claims of fiscal incentives and effective marketing helped to mobilize large amounts over a period of time. The initial success in mobilizing funds by some of these companies led to mushrooming of such schemes through out the country. In order to regulate the activities, the SEBI had introduced a collective investment scheme coming under the SEBI Act, 1992. The petitioner had

collected huge investments to these schemes and raised an aggregated amount of nearly Rs.0.27 Crores from the General Public and filed the details with SEBI regarding its collective investments schemes. Pursuant to SEBI press release dated 26.11.1977, the SEBI by communication gave an intimation to the petitioners, directing to send an information to all investors detailing the State of affairs of the schemes, the amount repayable to each investors and the manner in which it has to be done. The petitioners failed to make any application with SEBI for registration of Collective Investments Schemes being operated by them. Thereafter for violation of the provisions of the SEBI Act, 1992, a Criminal complaint came to be filed before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

6. Thereafter, on coming to know that, as per the amendment to the Regulations the punishment was amended on 20.10.2002, wherein the punishment and fine amount were to be rendered only by the Court of Sessions. Hence, the C.C.No.8798 of 2002 pending on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai was transferred, which was taken up on the file of the Additional District and Sessions Court and V Fast Track Court, Chennai as S.C.No.454 of 2010.

7. Further the petitioners challenged and contended that, the order of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai in committing the case to the Court of Sessions after examining the witnesses on the side of the respondent/complainant and on the side of the defence and the objection of the respondent at this belated stage is without Jurisdiction and not sustainable. Further, as per Section 29 of the SEBI Act the complaint made by SEBI, the Court can take cognizance of any offence and the Court of Sessions, without any complaint could not take cognizance of the offence. Further, the learned XXIII Metropolitan Magistrate, Saidapet, Chennai having no Jurisdiction erred in passing the order under Section 209 of the Code of the Criminal Procedure on a private complaint. Hence, the petitioners are prayed to quash the order passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai dated 24.09.2010.

8. This being so, on the other hand alternatively in the other quash petition, the petitioners raising the similar points and had contended that the respondent had filed a letter dated 18.12.2000 for the petitioner being violated the provisions of the SEBI Act and the punishment prescribed is one year and the complaint ought to have been filed within a period of one year. However, this case was filed before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai on 20.12.2002 and which is beyond the period of limitation and thereafter, the learned XXIII Metropolitan Magistrate, Saidapet, Chennai committing the case to the Court of Sessions is also bad in law and prayed to quash the proceedings in S.C.No.454 of 2010.

9. On the contrary, the SEBI had filed a counter and contended that the regulations came into force in the month of October 1999. After giving sufficient opportunity to the petitioners, the respondent had issued directions under Section 11B of the SEBI Act, 1992 vide order dated 07.12.2000 to repay the investors and wind up the schemes as per the Regulation 73 of the CIS Regulations. Despite the same, the petitioners had failed to comply with the directions of SEBI.

10. It is also submitted that, the petitioners had neither complied with the Regulations nor the directions of the SEBI dated 07.12.2000. The offence committed by the petitioners is a continuing offence and this Court vide order dated 18.09.2000 in CrI.R.C.NO.842 of 2005 in the case of Rhodanthe Agrotech Ltd & others Vs SEBI, wherein this Court had held that "Non-compliance of Regulations 73 and 74 for winding up the company is continuing in nature..... and the petition is not barred by limitation under Section 468 of Code of Criminal Procedure".

11. In view of the above, this Court finds that the contention of the petitioners are not sustainable. Hence, these Quash Petitions stand dismissed and consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2. The Principal District and Sessions Judge,
Principal District and Sessions
(Fast Track Court-V),
Chennai.

3. The Special Public Prosecutor,
High Court, Madras.

CrI.O.P.Nos.3158 & 11657 of 2011

MP (CO)
GN (08/01/2019)