IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2018

PRONOUNCED ON : 12.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.No.201 of 2011
and
M.P.No.1 of 2011

A.R.Vaithianathan .. Petitioner/Petitioner/Accused No.2

-vs-

1.The Securities and
Exchange Board of India
Rep. by its Assistant General
Manager S.V.Divya.
.. Respondent/Respondent/Petitioner

2.Kalrayan Teak Plantations Pvt. Ltd.,
Regd. Office, No.27, Vannier Street,
Solai Nagar, Muthiapet,
Pondicherry - 605 003.

3.S.Swaminathan, Regd. Office,
No.27, Vannier Street,
Solai Nagar, Muthiapet,
Pondicherry - 605 003.
.. Respondent/Respondent/Accused Nos.1 &3

PRAYER:

Criminal Revision Case filed under Sections 397 Cr.P.C., praying to call for the records made in the order dated 03.002.2011 made in Crl.M.P.No.119/2010 in S.C.No.216/2010 on the file of the V-Fast Track Judge, Chennai and to set aside the same and allow this criminal revision petition.

For Petitioner : Mr.Sudharshana Sundar

For Respondents : Mr.N.P.Kumar,
Special Public Prosecutor
For R1
: No appearance for R2 and R3

ORDER

The second accused is the revision petitioner herein. The first respondent Securities and Exchange Board of India (hereinafter referred to as SEBI) preferred a complaint in the year 2003 for the alleged violation under Section 11(B) of SEBI Act, 1992 and on 07.12.2000, the Chairman of SEBI has directed the Company to return back the money as they failed to adhere to the terms of the scheme (Collective Investment Schemes) in the year 1997. The prosecution has been launched as a private complaint and hence, the petitioner has filed a petition under Section 227 Cr.P.C., for discharge him from the prosecution. On dismissal of the same, the present revision has been filed.

2. Heard both sides and perused the records.

3. According to the learned counsel for the petitioner Mr.Sudharshana Sundar, the petitioner is the 2nd accused in the sessions case. The petitioner was not one of the Directors, since he met with an accident. Therefore, he has not committed any offence. A copy of minutes of the Board of Directors, certified copy of Form-32 issued on 04.05.2009 issued by Registrar of Companies, Pondicherry and the relevant documents about the accident are filed by the petitioner. After the public notice, dated 18.09.1997, the company stopped plantation activities. As per Section 9(c) of the Act, the eligibility for registration of Collective Investment Management is net worth of Rs.5 Crores. The petitioner company does not come under the category. When the company approached the SEBI Board for registration, they informed that the company is not eligible for registration since the total corpus fund collected is only Rs.8,71,620/-. Therefore, the complaint is not maintainable. Hence, the learned counsel for the petitioner prayed for discharging the petitioner from prosecution.

4. The learned Special Public Prosecutor appearing for SEBI submitted that prosecution against A1 company regarding its collective investment schemes in the year 1997, SEBI had issued notice and at that time, the petitioner/A2 was the Managing Director which was admitted by him. Only for that period in which the petitioner was the Managing Director, SEBI Board had filed the complaint against the company. It is clearly mentioned that the petitioner was in-charge of the company as one of the Directors at the time of complaint. The first accused has failed to make any application before SIBI for registration of the company. It is the charge against the company that they have collected to the extent of 0.087 Crores from the public and when SIBI has given them show cause to reimburse the amount collected, they have not done it. Hence, on 07.12.2000, the Chairman of SEBI, had directed the company to return back the

money under Section 11(B) of SEBI Act, 1992. On 12.05.2000, show cause notice was issued and on 31.03.2000 in News Papers, notice was published. The company was not registered neither wound up nor the money was returned back to the investors. Therefore, at the relevant time, when action was taken by SEBI, the petitioner/A2 was one of the Directors of the company. His removal from the Directorship was not informed to SEBI. Therefore, action was also taken against the petitioner and there is prima facie case against the petitioner/A2 and hence, A2 cannot be discharged.

5. It is seen from t he records that for violation of Rules and Regulations under Section 11(B) of SEBI Act, prosecution has been launched against A1-Company, in the year 2003. It appears that after lapse of seven years, the petitioner has filed the discharge petition in the year 2010. According to the counter filed by the SEBI, it was not informed about the removal of the petitioner from Directorship of the Company. The another point that has been raised by the petitioner is that at the relevant point of time, A2 was not a Director of the Company and prosecution cannot be launched in respect of the circular issued. Subsequently, the learned Special Public Prosecutor appearing for SEBI filed additional typeset of papers, wherein public notice was issued by the Sureties and Exchange Board of India, dated 18.12.1997 and press release has also issued in respect of SEBI (Collective Investment Schemes) Regulations, 1991, invited on 15.12.1999. It is also in the public notice to all the existing collective investment schemes published on 10th December 1999, Clause 3 therein gives a clear instruction that has to be followed by the existing Company and as per Section 303 (2) of the Companies Act, the company shall, within the periods respectively mentioned in this sub-section, send to the Registrar a return in duplicate in the prescribed form containing the particulars specified in the said register and a notification in duplicate in the prescribed form of any change among its Directors, Managing Directors, Secretaries and Treasurers, Managers or Secretaries, specifying the date of the change. The period within which the said return is to be sent shall be period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happenings thereof.

6. From the records, it appears that no reply was sent to the show cause notice by the company indicating A2 was removed by the Directorship as alleged by them in this petition. After seven years, they have come forward with the plea that he was removed from the Directorship at the relevant point of time. In such view of the matter, the order passed by the trial Court does not warrant any interference. Hence, with liberty to

agitate this point during the time of trial, the order passed in Crl.M.P.No.119 of 2010 in S.C.No.216 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai, dismissing the discharge petition filed under Section 227 Cr.P.C., is hereby confirmed.

7. Accordingly this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

PJL

To

1.The Additional District and Sessions Judge,
Fast Track Court No.V, Chennai.

2.The Special Public Prosecutor,
(Mr.N.P.Kumar) High Court, Madras

+1cc to Mr.Sudharshana Sundar, Advocate, S.R.No.86617

CRL.R.C.No.201 of 2011

SAI(CO)
RRS/23/01/2019