

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.392 OF 2019

Anil D. Modi,	...	Applicant
V/s.		
The State of Maharashtra	...	Respondents

Mr. Manish Bohra i/by A. S. Khant Associates, for the Applicant.

Mr. N. B. Patil, APP for respondent

CORAM : N. J. JAMADAR, J.

DATE : 8th November, 2019.

PC. :

1] Heard the learned counsel for the applicant and the learned APP for the State.

2] The applicant, who is the accused in Special Case No.235 of 2014 has invoked revisional jurisdiction of this Court, assailing the order dated 23rd July, 2019, passed by the learned Special Judge (SEBI), Mumbai, whereby the application preferred by the applicant/accused (Exh.24), for conducting trial of the case in accordance with the provisions contained in the Code of Criminal Procedure, 1973 (for short, "the Code"), for the trial of warrant cases instituted otherwise than on police report, was rejected.

3] The learned Special Judge was not persuaded to accede to the

submissions made on behalf of applicant that as the prosecution has been initiated on the basis of complaint, though the Special Judge presides over the Court of Sessions, all the provisions contained in the Code, for trial of warrant cases instituted otherwise than on police report, especially under Sections 244 and 245 of the Code, are required to be followed. The learned Judge was of the view that in view of the provisions contained in Section 26(B) of Securities and Exchange Board Act, 1992 (for short “SEBI Act”), the Special Court shall be deemed to be the Court of Sessions and, thus, the trial was required to be conducted in accordance with the procedure prescribed for the trial of Sessions Cases under the Code.

4] The learned counsel for the applicant placed reliance on the judgment of Hon’ble Supreme Court, in the case of **A. R. Antulay vs Ramdas Srinivas Nayak and anr**¹ to bolster upon the submission that the Special Judge was enjoined to conduct the trial in accordance with the procedure prescribed for trial of warrant cases instituted otherwise than on police report.

5] The learned counsel for the applicant strenuously urged that the learned Special Judge committed an error in rejecting the application. It was submitted that the fact that the prosecution was instituted on the basis of complaint was completely lost sight of by the learned Special Judge and

1 (1984) 2 SCC 500

thus the order impugned herein deserves to be interfered with.

6] Banking upon the observations of the Hon'ble Supreme Court in paragraph No.32 and 33 of judgment in the case of **A.R. Antulay** (supra), it was urged with tenacity that the order suffers from material illegality.

7] To begin with, it is pertinent to note that sub-section (2) of section 4 of the Code, regulates investigation, inquiry and trial of the offences under any law other than under Indian Penal Code. Sub section (2) of Section 4 provides that all offences under any other law shall be investigated, inquired into, tried, or otherwise dealt with according to the same provisions of the Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into trying or otherwise dealing with such offences.

8] It would be contextually to relevant to note that Section 26(A) of the SEBI Act provides for constitution of the Special Court for trial of offences under the SEBI Act, Section 26(D) is of material significance in the backdrop of the issue sought to be raised in the instant application. It reads as under:-

“26D Application of Code to proceedings before Special Court (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purpose 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”.

9] From the bare perusal of the aforesaid Section, it becomes evident that the Legislature has, by deeming fiction, provided that the Special Court which tries offences under Section 26(D) of the Act is the Court of Sessions and the person conducting prosecution before the Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code. Chapter XVIII of the Code regulates the trial before the Court of Sessions. Section 227 of the Code provides that if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, it shall discharge the accused and record his reasons for so doing. Thus, what is to be considered by the Sessions Judge is the record of the case and the documents, submitted therewith. The Legislature has not used the expression “police report” which has been mentioned in the provisions which regulate the trial of the cases before the Magistrate.

10] The reliance placed by the learned counsel for the applicant on the judgment of the Supreme Court in the case of **A.R. Antulay (supra)** does not appear to be well founded as in the said case the Supreme Court was dealing with the provisions contained in the Prevention of Corruption Act, 1947. Sub section (1) of section (8) of the Act, 1947, specifically provided that in trying accused persons, the Special Judge, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrate. In the backdrop of the aforesaid provision, Supreme Court has made observations in para 32 and 33 of the said judgment. The analogy sought to be drawn by the learned counsel for the applicant does not merit acceptance.

11] In the aforesaid view of the matter, no fault can be found with the impugned order, passed by the learned Special Judge.

12] Hence the Revision Application stands rejected.

[N. J. JAMADAR, J.]