



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.20346 of 2014

and

MP.No.1 of 2014

1. Green Earth Orchards India Limited,
Represented by its Director E.Ravikumar,
Shop No.58, Sri Parameswari Complex,
45 Feet Road, Vengateswara Nagar,
New Saram, Pondicherry - 605 005.
 2. S.Ragouram
 3. E.Ravi Kumar
- ..Petitioners/Accused 1, 2 & 4

.Vs.

Securities and Exchange Board of India,
Rep by its Assistant General manager,
3rd Floor, D'monte Building,
D' Monte Colony, T.T.K.Road,
Alwarpet, Chennai 600 018

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, call for the records relating to C.C.No.6430 of 2004 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioners.

For Petitioners: Mr.S.Anil Sandeep
For Respondent : Mr.Shivakumar
for Mr. Suresh.

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.6430 of 2004 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

2.The brief facts leading to filing of this Criminal Original petition is that the 1st petitioner is a company. The petitioners 2 and 3 are the Directors of the Company. The Securities and Exchange Board of India (SEBI) has preferred a complaint under Section 200 of the Code of Criminal Procedure, 1973 read with Section 24 ad 27 of Securities and Exchange Board



of India Act, 1992 read with Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 as amended, alleging therein that the Accused Company has been operating a collective investment scheme and had collected an aggregate amount of Rs.14 lakhs from the General public. 1st Petitioner/Company filed information details with SEBI regarding its collective investment Schemes pursuant to SEBI's press release dated 26th November, 1997 and Public Notice dated 18th December, 1997 issued by the Board.

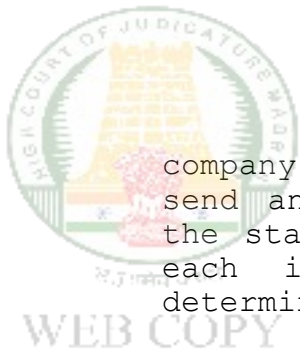
3. Chapter IX of the said regulations, any person who had been operating as collective investment Scheme at the time of commencement of the said regulations shall be deemed to be an existing collective investment scheme and shall comply with the provisions of the said Chapter IX. Further, in terms of the said Chapter IX, any person who immediately prior to the commencement of the said Regulations was operating as collective investment scheme shall make an application to SEBI for grant of registration within a period of two months from the date of notification of the said regulations.

4. The Accused No.1 did not file information with SEBI pursuant to the public Notice dated 18.12.1997 whereby, SEBI had directed all the existing entities engaged in Collective Investment Schemes to file certain information about their schemes with it by 15.01.1998. After the letter dated 21.04.1998 from SEBI asking the petitioner company to show cause as to why appropriate action should not be taken against the said company for not furnishing such information.

5. Consequent to the said Regulations dated October 15, 1999, every person who, immediately prior to the commencement of the said Regulations, operating a Collective Investment Scheme(s), was required to make an application to SEBI for the grant of registration within a period of two months from the date of notification, under the provisions of the said Regulations.

6. In terms of Regulation 73 of the said Regulations, an existing Collective Investment Scheme, which has failed to make an application for registration with SEBI was required to wound up its scheme and repay its investors in the manner specified therein. Further as per Regulation 74, an existing Collective Investment Scheme, which is not desirous of obtaining provisional registration from SEBI, is required to formulate a scheme for repayment and make repayment to the exiting investors in the manner specified in Regulation 73.

7. SEBI by way of Public Notice dated December 10, 1999 had intimated the accused company that if in case, the accused



company is not desirous of obtaining registration from SEBI, to send an information Memorandum to all the investors detailing the state of affairs of the Scheme(S), the amount repayable to each investor and the manner in which, such amount is determined, latest by February 28, 2000.

8. Meanwhile, SEBI, having regard to the interest of the investors and requests received from various entities extended the last date for submitting applications for grant of registration by existing entities up to March 31, 2000. Though the same was intimated to the accused company, it did not apply for grant of registration in terms of the said Regulations.

9. In spite of repeated notifications, the Accused company neither applied for registration under the said regulation nor has taken any steps for winding of the scheme and made payment to the investors in the manner provided under the said regulations. Further, SEBI by way of show cause notice dated May 12, 2000, the accused company was asked to show cause as to why action shall not be initiated against it for non-compliance. The Accused company did not report compliance of the said directions within the time granted for the said purposes, directions under Section 11B of SEBI Act, 1992 read with Regulations 65 & 73 of SEBI (Collective Investment Scheme) Regulations, 1999 were issued vide SEBI's order dated December 7, 2000. The Accused/Company raised a total amount of nearly 14 lakhs by its own admission and its failure to refund the same to the investors, who invested their hard earned money in the schemes operated by the Accused Company. The Accused No.2 to 6 are Directors of the said company and as such, they are responsible for Accused company for the conduct of its business and as such, they are liable for the violation of Section 27 of Securities and Exchange Board of India Act, 1992. Hence, this complaint.

10. The learned counsel for the petitioner submitted that the complaint is based on the alleged non-compliance of the directions issued by SEBI vide its order dated 07.12.2000 under Section 11(B) of the SEBI Act, within one month's time from that date i.e. within 06.01.2001 and hence, the alleged offence under Section 24 of the SEBI Act has been committed. Even if that was the case, the learned Magistrate within one year from 06.01.2001 for an offence under Section 24(1) of the SEBI Act, or within three years from 06.01.2001 for an offence under Section 24(2) of the SEBI Act, as contemplated under Section 32 of the SEBI Act read with Section 468 of Cr.P.C. In this case, the complaint itself has been filed only in July 2004, which is clearly more than the prescribed period of limitation provided under Section 468 of Cr.P.C. The learned counsel further submitted that the 2nd petitioner had resigned from the directorship of the 1st



petitioner as early as on 10.12.1998 and he was not a director of the 1st petitioner on the date of the alleged offence and hence, he is not liable for prosecution.

11. The learned counsel for the petitioners relied upon the following judgements :-

(a) [C.K.Ranganathan Vs. Registrar of Companies] order dated 19.12.2001.

(b) [virender Kumar Singh and another Vs. Securities order dated 30.01.2008.

(c) [Anita Malhotra Vs.Apparel Export Promotion Counsel and another] dated 08.11.2021.

(d) [Srinivasa Ragavan Vs. P.Vijayakumar] dated 20.09.2019.

12. The learned counsel for the respondent filed a counter affidavit and it is stated in the counter affidavit that the complaint filed by SEBI is barred by limitation and also relied upon the judgement of the Hon'ble Supreme in State of Bihar Vs. Deokaran Nenshi (1973 CrL Law journal 347) has explained the concept of "Continuing offence" in the following words.

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a "Failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place where an act or omission is committed once and for all".

13. The learned counsel further relied upon the judgement of the Hon'ble Court of Delhi in its judgement dated 25.10.2010 in the matter of Samarpan Agro & Livestock Limited had made the following observations :

13. In this case, under Section 12(1B) no person could have carried out a collective investment scheme unless he obtained a certificate of registration from the Board in accordance with the regulations framed under the Act. Regulations were



WEB COPY

framed in the year 1999 and notified to all concerned including the petitioner. As per Regulation 68 any person operating a collective investment scheme at the commencement of the regulations was under legal obligation to get the existing collective investment scheme registered with the Board and obtain a certificate of registration. If it failed to do so, it was a legal mandate to such person to wind up the existing collective investment scheme by following the procedure as prescribed under Regulation 73. Regulation 74 further provided that existing collective scheme which was not desirous of obtaining provisional registration from the Board was legally bound to formulate a scheme of repayment and make such repayment to the existing investors in the manner specified in Regulation 73. Nothing has been placed on record to suggest that petitioners had taken any step to get registered with the Board or wound up the collective investment scheme and made the payment to the investors. The amount still continues to be retained by the petitioners, thus, infringement of Regulations 73 and 74 is continuing in nature and limitation envisaged under Section 468 Cr.P.C. would not be attracted.

6. The CIS Regulations were notified and came into force with effect from 15.10.1999. In the instant case, it is the 1st petitioner company's admission in its letter dated 11.06.2000 that it had mobilised Rs.14,72,865/- from public in the schemes launched during the year 1997 and that it had repaid Rs.1,20,920/- only to few customers /investors. Thus, it can be seen that as of 11.06.2000, the 1st petitioner company had to make refunds to the tune of more than Rs.13 lakhs. The 1st petitioner company had sent another letter dated 08.08.2000 to SEBI, wherein it is stated that it made refunds to the tune of Rs.10,96,740/- to 75 customers and in respect of 181 units invested by them and that an amount of Rs.3,76,125/- was still to be repaid then. Thereafter, there was no correspondence seen on record and that the 1st petitioner and the accused directors have also not provided proof to support their statement regarding refund to investors.

14. This Court has carefully considered the submissions made on either side and also perused the materials placed before it.

15. This Court while dealing with the similar matter



14. It is not in dispute that the 1st petitioner company and the petitioners 2 to 4 who are the Directors of the 1st petitioner company, were involved in the business of collecting funds from the public under a Collective Investment Scheme. Pursuant to the same, the company had evolved three schemes under which the public could register a certain sq. yard of land consisting of Mangium wood trees ie., plantations. The minimum period of investment was 10 years and thereafter, the investor would be repaid either by registration of lands or repayment of cash. It is also not disputed that the petitioner company invested the money in Mutual Funds and waited for the maturity amount.

15. Subsequently SEBI (Collective Investment Scheme) Regulations, 1999, came into force on October 15, 1999, requiring either Certification of Registration from SEBI to continue with the existing schemes or winding up of the schemes. One of the conditions to be fulfilled in order to continue with the scheme is "the applicant shall meet the minimum net worth of Rupees one crore within one year from the date of grant of provisional registration which shall be increased by Rupees one crore each within two years, three years, four years and five years from the date of grant of provisional registration", otherwise, they have to settle the amount. The petitioners company could not raise the above said investment and the amount in the scheme was not more than Cr1.O.P.No.8660 of 2013 the limit fixed by the SEBI Regulations and therefore, they wanted to inform its Unit Holders/investors for winding up in accordance with SEBI Regulations. The Petitioners have paid the entire amount between May 2000 and July 2005. Therefore, they have settled the amount to the investors ie., even before the respondent filed the private complaint before Magistrate under Section 200 Cr.P.C., and hence, the process of repayment commenced.

16. During the pendency of the complaint, the Petitioners are stated to have settled the matter. But according to the respondent, the petitioners have not settled the matter. There is no proof to show that the petitioners settled the money. Further, the petitioners themselves have admitted they could not comply with the SEBI Regulations and they could not settle the amounts to the investors on or before the



date specified by SEBI. Therefore, private complaint was pending.

17. In view of the decision of the Honourable Supreme Court, in the case of Securities and Exchange Board of India vs M/s.Vipra Farms (India) Ltd., and others, [SLP.(Crl).No.2471-2473 of 2010] referred to above, this court is of the view that the XIX Additional Judge, City Civil Court, has got the jurisdiction to try the case.

16. In the present case, the 1st petitioner /the accused No. 1 is a company registered under the provisions of the Companies Act and the petitioners 2 and 3 /accused No.2 and 3 are the directors of the accused No. 1 company. The accused No. 2 and 3 are the persons in charge and responsible for the day to day affairs of the company. Since the 2nd petitioner was resigned from the Directorship as early as on 10.12.1998 before the date of the alleged occurrence, the proceedings insofar as the 2nd is quashed and insofar as the 1st petitioner / company and the 3rd petitioner, even though the petitioners have stated that they settled the money, the respondent has subsequently disputed the fact that the petitioners have not produced any documentary proof to show that the amount was settled.

17. In these circumstances, prima facie, whether the petitioner 1 and 3 have complied with SEBI Regulations on or before the date mentioned in the Regulation, however, the complaint has been subsequently filed. Further, the matter has been settled or not and whether the offence is compoundable or not are the questions to be decided in the trial by putting forth evidence.

18. Under these circumstances, this Court does not find any ground to quash the proceedings and the criminal original petition is liable to be dismissed. Accordingly, the present petition is dismissed, granting liberty to the petitioner 1 and 3 to take all their defence before the trial Court. Insofar as the 2nd petitioner is concerned, since he resigned from the Directorship as early as in the year 1998, the proceedings pending in C.C.No.6430 of 2004 against him alone is quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar



rka

To

WEB COPY

1.XXIII Metropolitan Magistrate, Saidapet, Chennai

2.The Additional Public Prosecutor
High Court Campus,
Chennai.

3.The Assistant General Manager,
3rd Floor, D'Monte Building,
D'Monte Colony, T.T.K.Road,
Alwarpet, Chennai-600 018.

+2cc to Mr.Anil Sandeep.S, Advocate, S.R.No.48139

CRL.O.P.No.20346 of 2014
and
MP.No.1 of 2014

BR(CO)
CB(10/11/2021)