

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

**CRIMINAL WRIT PETITION NO. 4874 OF 2019
WITH
CRIMINAL WRIT PETITION NO. 5422 OF 2019
WITH
CRIMINAL WRIT PETITION NO. 5423 OF 2019**

Rajumar Chainrai Basantani ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Manish Bohra i/by M/s. A. S. Khan and Associates, Advocate for the
Petitioner in all Writ Petitions.

Mr. Kushal Mor, Advocate for Respondent No.2 – SEBI.

Mr. A. R. Patil, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 3rd AUGUST, 2022.**

PER COURT:

1. The petitioner has challenged the order dated 4th September, 2019 passed by the learned SEBI Special Judge, City Civil & Sessions Court, Greater Mumbai in SEBI Special Case Nos.190 of 2015; 316 of 2014 and 317 of 2014.
2. The complaints were filed by respondent No.2 for the offence punishable under Section 24(2) of the Securities and Exchange Board of India Act, 1992 (for short “SEBI Act”).
3. The petitioner filed application for calling upon the complainant to lead evidence before the charge. It was contended

that the complaint was instituted otherwise than on a police report. As per Section 244 of Cr.P.C. when in any warrant case instituted otherwise than on a police report, the accused appears or is brought before the Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. The Magistrate may on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing. As per Section 245(4) of Cr.P.C. if upon taking all the evidence referred to in Section 244 of Cr.P.C. the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. As per Section 245(2) nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case, if for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

4. The Special Judge under SEBI, rejected the application by order dated 4th September, 2019.

5. Learned Advocate for the petitioner submitted that the prosecution has been initiated on the basis of complaint and

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. He relied upon the decision of the Hon'ble Supreme Court in the case of **A.R. Antulay V/s. Ramdas Srinivas Nayak and Anr.**¹. It is submitted that the Sessions Court has committed an error in rejecting the application preferred by the petitioner. The trial Court failed to appreciate that there are only two ways in which the criminal complaint can be filed. One is on police report and another is otherwise than police report.

6. Learned counsel for the respondent submitted that the submission of learned counsel for the petitioner cannot be accepted. The Special Court is adopting correct procedure. Similar submission advanced by the learned counsel for the petitioner has been dealt with by this Court and rejected vide order dated 8th November, 2019 passed in Criminal Revision Application No.392 of 2019.

7. This Court in another proceedings wherein similar contention was urged had dealt with the issue raised in this petition. In order dated 8th November, 2019 passed by this Court in Criminal Revision

1 (1984) 2 SCC 500

Application No.392 of 2019, it is observed 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 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 investigation, inquiring into trying or otherwise dealing with such offences. Section 26(A) of the SEBI Act provides that constitution of the Special Court for trial of offences under the SEBI Act. Section 26(D) provides that, save as otherwise in this Act, the provisions of the Code of Criminal Procedure, 1973 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 Sessions and 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. This Court then observed that the aforesaid provision makes it evident that the legislator has by deeming fiction, provided that the Special Court which tried 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 no sufficient ground for proceeding against the accused, it shall discharge the accused and record his reasons for so doing. 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 mentioned in the provision which regulate trial of the case before the Magistrate. The Court also considered decision of the Hon’ble Supreme Court in the case of **A.R. Antulay** (supra) relied by advocate for petitioner and observed that reliance on said decision is not well founded as in the said Court was dealing with the provisions contained in the Prevention of Corruption Act, 1947. Sub section (1) of Section (8) of the Act, 1947 provided that in trying accused persons, the Special Judge shall follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases by Magistrate. The analogy drawn by the counsel for the applicant does not merit acceptance.

8. I am in agreement with the view expressed by the learned single Judge in order dated 8th November, 2019 passed in Criminal Revision Application No.392 of 2019. The submissions of learned counsel for the petitioner is devoid of merits. No interference is called for in the impugned order passed by the trial Court.

ORDER

Writ Petition Nos. 4874 of 2019, 5422 of 2019 and
5423 of 2019 are rejected and disposed of.

(PRAKASH D. NAIK, J.)