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Crl.O.P.No.25332 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.25332 of 2024

and

Crl.M.P.No.14207 of 2024

S.Maniyan

.. Petitioner

Vs.

1. State of Tamil Nadu rep,
by the Inspector of Police,
Central Crime Branch-2,
ALGSC-II, Team-22,
Vepery, Chennai -600 007.

2. S.T.G.Gangadharan

.. Respondents

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, to set aside the docket order dated 20.09.2024 passed in unnumbered Criminal M.P.S.R.57948 of 2024 in C.C.No.6821 of 2023 consequently direct that the said petition to be numbered and taken on file of the learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases Court, Egmore, Chennai.

For Petitioner : Mr.C.Umashankar

For R1 : Mr.K.M.D.Muhilan
Government Advocate (Crl.Side)



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ORDER

The petitioner is an accused in C.C.No.6821 of 2023 on the file of learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases Court, Egmore, Chennai.

2. After receipt of the copies under Section 207 of Cr.P.C, the petitioner has filed the application for discharge. In the said application in CrI.MP.SR.No.57948 of 2024 dated 20.09.2024, the petitioner has specifically stated that since FIR is prior to BNSS Act came into effect, the petition to discharge is filed under the old Code. In any event, if there is any delay in filing discharge petition under BNSS, the said delay may be condoned.

3. The learned Magistrate has returned the application for discharge with the following endorsement :

*“ On careful perusal of entire case records in C.C.No.6821 of
2023*

*(i) As per the BNSS Act case entered into BNSS act as
on 01.07.2023.*



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(ii) Under Section 262 of BNSS stated that discharge

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(iii) The petitioner received copies on 09.01.2024 and the time period was lapsed.

Hence how this petition is maintainable to be explained accordingly this petition is returned”.

4. Being aggrieved, the present petition is filed stating that the FIR was registered under provisions of IPC Sections 419, 420, 465, 467, 468, 471, 474, 447 r/w 34 and 120(B) of IPC. As BNSS Act, was given effect from 01.07.2024, under Section 531(2) of BNSS all proceedings initiated prior to the date of effect of BNSS Act, the Code of Criminal Procedure, 1973 has to be applied since the case in hand was for offence under IPC. While so, the learned Metropolitan Magistrate ought not to have returned the application for discharge citing limitation prescribed under the BNSS Act.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police submits that the combined reading of Section 358 of BNS Act and 531 of BNSS Act it is without any ambiguity that any offence committed



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before BNS Act came into force, the provisions of IPC will apply and wherever offences under IPC is tried, code of Criminal Procedure, 1973 would apply and not the provisions of BNSS Act.

6. He further state that reading of Section 531(3) would clarify that if any limitation prescribed under the old Code and for offences under IPC. If the limitation is expired before BNSS come into force, the provisions of BNSS cannot be applied. Thus, both positively as well as negatively, the BNSS has made clear that for the offence committed before 01.07.2024 will be under IPC and procedure to be followed in the code of Criminal Procedure, 1973 and not BNSS, 2023.

7. On Considering the provisions of law, it is very clear that as far as offences committed prior to 01.07.2024 and which attracts the provisions of Indian Penal Code, the procedure to be adopted for conducting trial, enquiry or investigation shall only the procedure contemplated under the code of Criminal Procedure, 1973. This is made clear by the non-obstante clause under Section 531(2)(a) of BNSS which reads as below:



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“531. Repeal and Savings - (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.

(2) Notwithstanding such repeal-

(a) If, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said code), as if this Sanhita had not come into force”.

8. When the Statute is clear that immediately before the commencement of BNSS Act, the appeal, application, trial, inquiry or investigation pending and continue in accordance with provisions of Cr.P.C, 1973, as if this BNSS Act had not come into force, the limitation prescribed under Section 262 of BNSS Act, 2023 has no application. While the repeal and saving clause in BNSS specifically states that BNSS Act only have prospective effect, the learned Magistrate has unfortunately attempted to give retrospective effect, to the provisions of BNSS to deprive the right of the petitioner herein seeking redressal under the old Code.



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9. Section 262 of BNSS Act referred by the Magistrate speaks about discharge petition and limitation. This Section makes clear that any application under Section 262 of BNSS Act for discharge to be filed within sixty days from the date of supply of copies of the documents under Section 230 of BNSS. It is to be noted that the limitation of 60days to be reckoned with supply of copies under Section 230 of BNSS and not with Section 207 of Cr.P.C

10. While the statute is very clear without any ambiguity, the learned Judicial Magistrate had returned the application for discharge on untenable reasons citing provision of law which was not in force and applicable to the case in hand.

11. At this juncture, it is also profitable to refer Section 358 of BNS which deals with repeal and saving of BNS.

Section 358 of BNS reads as below:-

Repeal and savings.- (1) *The Indian Penal Code is hereby repealed.*

(2) *Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,—*



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(a) the previous operation of the Code so repealed or anything duly done or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Code so repealed; or

(c) any penalty, or punishment incurred in respect of any offences committed against the Code so repealed; or

(d) any investigation or remedy in respect of any such penalty, or punishment; or

(e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed. (Emphasis herein under:)

(3) Notwithstanding such repeal, anything done or any action taken under the said Code shall be deemed to have been done or taken under the corresponding provisions of this Sanhita.

(4) The mention of particular matters in subsection (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of the repeal.

While Section 358 (e) of BNS says:-

Any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code



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had not been repealed.

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12. The learned Metropolitan Magistrate for Exclusive Trial of CCB Cases (relating to cheating cases in Chennai) and CBCID Metro Cases Court, Egmore, Chennai, erred in returning the application cited reasons and provision not applicable to the case. Hence, it is directed to take the discharge petition on file, number it and pass orders in accordance with law.

13. The Registry is directed to return the original discharge petition which forms part of the typed set of papers to the petitioner herein in order to give an opportunity for him to represent it before the trial Court. The time for representation is thirty days (30) from today.

14. With the above observations, this *Criminal Original Petition* is *disposed of*. Consequently, the connected miscellaneous petition is closed.

17.10.2024

Vv

Note: *Issue Order Copy on 18.10.2024*



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To

1. The Metropolitan Magistrate for Exclusive Trial of CCB Cases
(relating to cheating cases in Chennai) and CBCID Metro Cases Court,
Egmore, Chennai.
2. The Inspector of Police,
Central Crime Branch-2,
ALGSC-II, Team-22,
Vepery, Chennai -600 007.
3. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

Vv

Crl.OP.No.25322 of 2024

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