



CrI. R.C. No.1946 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

CrI. R.C. No.1946 of 2023

Dineshchand Surana

.. Petitioner

- Vs -

The Senior Assistant Director,
Serious Fraud Investigation Office (SFIO),
Corporate Bhavan,
No.29, Rajaji Salai,
Ground Floor,
Chennai – 600 001.

.. Respondent

Criminal Revision Case filed under Section 397 r/w Section 401 of the Cr.P.C., 1973 to set aside the order dated 04.08.2023 passed by the XV Additional Sessions Judge, Special Court to deal with trial of offences under Companies Act in CrI. M.P. No.10258 of 2023 in Spl. C.C. No.1 of 2023.

For Petitioner

: Ms. S.Ramya

For Respondent

: Mr.A.Sriram for Mr.B. Mohan, Spl. PP

ORDER

This Criminal Revision Case has been filed to set aside the order dated 04.08.2023 passed by the XV Additional Sessions Judge, Special Court to deal with trial of offences under Companies Act in CrI. M.P. No.10258 of 2023 in



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Spl. C.C. No.1 of 2023.

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2. The short facts leading to filing of this case are as follows :-

It is stated in the affidavit filed in support of this petition that as per the records of the Registrar of Companies, the petitioner was never a Director of M/.Surana Corporation Ltd. (SCL). On the other hand, he was the Managing Director of two Companies, viz., M/s.Surana Industries Ltd., (SIL) and M/s.Surana Power Ltd., which were under liquidation. Based on a complaint lodged against the petitioner for the serious crime of economical offence viz., swindling of huge money from public sector bank, he was arrested and cognizance was taken for the offences punishable under Section 36(c) r/w 447, 143 r/w 147, 178 (8), 188, 447, 448 r/w 129, 131, 447, 448 of Companies Act, 2013 and Section 227 r/w 233, 628 r/w 211, 628 of Companies Act, 1956 and u/s. 420, 120 (B) of IPC by the Special Court. Upon taking cognizance, the Special Court issued the order of summons to the petitioner. Thereafter, the order of remand was extended periodically and is in force. In such circumstances, the petitioner filed a petition under Section 309 of the Code of Criminal Procedure seeking for cancellation of remand extension before the XV Additional City Civil Court. The learned Sessions Judge dismissed the said petition by the order impugned herein. Challenging the same, this Criminal Revision Case has been filed.



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3. Learned counsel for the petitioner submitted that while extending the remand order, cogent reasons have to be furnished, but the same was not done in the petitioner's case and therefore, the impugned order is arbitrary and illegal. She further submitted that the period of incarceration, which is more than a year, suffered by the petitioner has not been taken note of. She vehemently argued that due to mechanical order of remand extension, the reputation of the petitioner has been jeopardized. Also, she submitted that the mechanical extension of remand affected the personal liberty as well as the right of the petitioner. She further submitted that final report was submitted by the SFIO and therefore, the question of the petitioner intimidating the witnesses or tampering with the records would not arise, as the the petitioner's assets have already been frozen. She vehemently contended that the doctrine of proportionality has not been followed and as such the non consideration of relevant materials / facts vitiates the remand. Thus, the impugned order suffers from illegality and patent irrationality and the same deserves to be set aside. In support of her contentions, she quoted various judgments and prays for allowing of this petition.

4. Per contra, Mr.B.Mohan, learned Special Public Prosecutor assisted



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by Mr.A. Sriram, learned counsel submitted that after considering the final report submitted by SFIO, and after deciding the issue of cognizance, summons were issued to the petitioner and subsequently remand order was extended frequently. He drew the attention of this Court to gist of the case and submitted that the petitioner being positioned in a higher rank was involved in the crime of siphoning of huge amounts belonging to the bank. He submitted that when the petitioner is holding a higher position and vested with more responsibilities, the fraudulent act and falsification of financial statements have caused more detriment to the Company and its shareholders / investors. Rebutting the grounds raised by the petitioner, he vehemently argued that the remand order can be extended as per the provisions contemplated under the Code of Criminal Procedure as the petitioner has not obtained bail. Hence, without seeking bail, approaching this Court by way of challenging the order impugned herein is not maintainable in the eye of law. Thus, no interference is called for with the impugned order and, accordingly, prays for dismissal of this petition.

5. This Court bestowed its best attention to contentions advanced by the learned counsel on either side and perused the materials available on record.



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6. Even a bare perusal of records reveal that there is serious allegation of economic crime against the petitioner relating to swindling of money from the public sector banks amounting to about Rs.8,000 crores . Admittedly, the order of summoning was issued to the petitioner on 12.01.2023 by the Special Court under Companies Act and thereafter the order of remand is being extended till now. It is not in dispute that the period of incarceration suffered by the petitioner is more than a year. However, it is to be pointed out that the mere fact that the petitioner has been under incarceration for a period of about one year cannot be a ground to consider giving the relief u/s 309 Cr.P.C. as the gravity and seriousness of the offence have to be looked into. Further, it is to be noted that the petitioner being placed in a higher position of the Company had indulged in serious economic offence, which has affected the interest of the Company and its shareholders/investors, who have invested huge sums in the Company. Further, it is clear that a final report, which runs to several pages have been submitted by the investigation team.

7. The petitioner has taken a stand that the extension of remand ought not to be granted as the triple tests mandated is not followed. The triple test



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mandates are -

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- i) That the person sought to be arrested is a flight risk;*
- and/or*
- ii) That there is a reasonable apprehension that the person sought to be arrested will tamper with evidence; and/or*
- iii) There is reasonable apprehension that the person sought to be arrested will intimidate/influence witnesses.*

8. The triple tests, which have been mandated for considering the case with regard to extension of remand would have necessary reference to flight risk and intimidatating the witnesses. Though the investigation has been completed and final report has been filed, however, the risk of the petitioner by resorting to flight and also intimidating/influencing the witnesses on coming out cannot be ruled out. Though tampering of records may not be possible, as SFIO has taken custody of the same, however, the risk of flight and intimidating the witnesses cannot be said to be nil Therefore, in cases where the economic consideration, which is alleged to have been swindled is too high, courts are more cautious in giving the benefit of Section 309 Cr.P.C.

9. Thus, this Court is of the view that all the above factors have been rightly considered by the learned Sessions Judge and thereafter only dismissed the petition seeking cancellation of extension of remand under



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Section 309 of the Code of Criminal Procedure.

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10. Further, while dismissing the petition under Section 309 of Cr.P.C., it has been observed by the learned Sessions Judge, that the petitioner cannot be released under any other provisions of law unless and until he is granted bail. It is to be borne in mind that without resorting to seeking bail, the petitioner attempts to wriggle out of the judicial detention by seeking the benefit u/s 309 Cr.P.C. The petitioner cannot bypass the provision of bail by resorting to the provision u/s 309 Cr.P.C. When the petitioner is alleged to have siphoned off huge sums of money from public sector banks, which is under investigation, leaving the petitioner from being remanded would result in the petitioner seeking to intimidate the witnesses, as the funds involved in the present case is of enormous proportion.

11. Further, Section 309 of the Code of Criminal Procedure speaks about the power of the Court to postpone or adjourn proceedings and for better appreciation the same is quoted hereunder :-

309. Power to postpone or adjourn proceedings. (1) In every inquiry or trial, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for



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reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under Sec.376, Sec.376-A, Sec.376B, Sec.376C or Sec.376D of the Indian Penal Code(45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the chargesheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

[Provided also that -

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the



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witness, as the case may be].

Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

12. A bare perusal of provisions contemplated u/s 309 Cr.P.C. reveals that remand has to be extended by the Magistrate recording reasons. May be, the reasons recorded in the present case are very minimal, but the same cannot be said to be a case of no reason. Further, it is also to be pointed out that the petitioner has not sought for bail, but seeks benevolence u/s 309 Cr.P.C. Section 309 Cr.P.C. does not speak of automatic enlargement of an accused on bail, in the event of not recording reasons. It merely speaks about the circumstances and the manner in which remand can be extended. When the Special Court has satisfied itself with regard to the necessity for remand and had recorded reasons and in the absence of the petitioner fulfilling any of the conditions prescribed u/s 309 Cr.P.C., the remand sought for by the petitioner cannot be acceded to.

13. Section 309(2) is therefore clear and empowers the Court to



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remand the accused by a warrant in the event of postponing or adjourning the inquiry or trial. The court need to record reasons only for the purpose of adjourning or postponing the proceedings and not for extension of remand. In the present stage of the case, though satisfying the triple tests is a necessity, however, as aforesaid, the petitioner cannot be said to be fully covered under the triple tests to negate the possibility of flight risk and intimidation of the witnesses.

14. Though many decisions have been relied on, on behalf of the petitioner, however, the same would not squarely stand attracted to the case on hand, as the extension of remand in the present case is not on the question of adjourning the matter for want of presence of the witnesses, but on the progress of investigation. The court below, having satisfied itself that the remand of the petitioner is necessary, had remanded the petitioner by recording reasons and merely because the petitioner is aged about 62 years, that alone cannot be a ground to consider the case of the petitioner to be set free by relaxing the remand.

15. The primary purpose of Section 309 is to conduct speedy trials. Hence, entertaining this petition will cause more complications, that too,



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when the investigation team has submitted a final report, which is commonly phrased as “A sledgehammer to crack a nut”. It is noticed that because of filing more petitions of this nature, without seeking bail, the petitioner is trying to drag on the proceedings and frustrate the trial of the case. Therefore, the prayer sought for by the petitioner does not merit acceptance.

16. For the reasons aforesaid, the present revision is dismissed by confirming the impugned order, dated 04.08.2023 passed by the learned XV Additional Sessions Judge, Special Court in CrI. M.P. No.10258 of 2023 in Spl. C.C. No.1 of 2023.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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M.DHANDAPANI, J.

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To

1. The XV Additional Sessions Judge Spl. Court, Chennai.
2. The Public Prosecutor High Court, Madras – 104.

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