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Crl.R.C.No.2387 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

Coram

The Honourable Mr.Justice Sunder Mohan

Crl.R.C.No.2387 of 2024

and

Crl.M.P.No.18416 of 2024

Suneetha

...Petitioner

Vs.

1. The Sub Inspector of Police,
Central Crime Branch,
EDF -III, Team XXB,
Vepery, Chennai – 600 007,
Cr.No.66 of 2022

2. G.S.Thiyagarajan

...Respondents

Prayer

Criminal Revision Petition filed under Section 438 & 442 of BNSS Act, 2023 to set aside the order dated 06.09.2024 made in Crl.M.P.No.54530 of 2024 in C.C.No.4777 of 2022 on the file of the Metropolitan Magistrate for CCB & CBCID, Egmore, Chennai, consequently, to direct the Metropolitan Magistrate for CCB & CBCID, Egmore, Chennai to take up the Discharge Petition filed by the petitioner on file and hear the same on merits.



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For Petitioner : Mr.S.Jeyakumar

For Respondent : Dr.C.E.Pratap
Government Advocate (Crl.Side)

Order

This Criminal Revision Petition is filed challenging the order of dismissal of the Discharge Petition filed by the petitioner on the ground that the said Petition has been filed with a delay of 66 days, which is beyond the condonable period prescribed under Section 262 of BNSS Act 2023.

2. The learned counsel appearing for the petitioner would submit that the offences alleged to have committed by the petitioner, was prior to the coming into force of BNSS Act, 2023; that as per Section 531 of the BNSS Act, the procedure that is applicable for such offences is Code of Criminal Procedure 1973; and that this Court had in a similar case considered the said provision and held that BNSS Act would have only prospective effect, and for the offence committed prior to 01.07.2024, the provision of Code of Criminal Procedure would be applicable.



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WEB COPY 3. Heard the learned Government Advocate (Crl.Side) for the respondent.

4. Admittedly, chargesheet was filed in the year 2022. Therefore, the alleged offences were committed prior to 01.07.2024. This Court, while interpreting the provisions of Section 531 BNSS Act, in **S.Maniyan Vs. State of Tamil Nadu, rep. Inspector of Police and other, in Crl.O.P.No.25332 of 2024, dated 17.10.2024**, held as follows:-

""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;- "

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 Repeal and Savings – (1) The Code of Criminal Procedure, 1973 (2 of 1974) is hereby repealed.



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(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 the 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."

5. Therefore, the aforesaid observations are squarely applicable to the case on hand. Hence, this Court is of the view that the learned Trial



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Judge ought to have entertained the Discharge Petition on merits.

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6. Hence, the impugned order is set aside. The learned Magistrate is directed to consider the Discharge Petition afresh on merits and dispose of the same in accordance with law.

7. This Criminal Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

21.12.2024

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Index : yes/no

Neutral Citation : yes/no

To
The Metropolitan Magistrate for CCB & CBCID,
Egmore, Chennai.



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Sunder Mohan,J.,

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