IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO.193 OF 2024

Securities and Exchange Board of India ....Applicant
V/S
R. Shivgurunathan & Anr. ....Respondents

Mr. Omprakash Jha i/b The Law Point *for the Applicant.*

CORAM : SANDEEP V. MARNE, J.
DATE : 2 DECEMBER 2025.

P.C.:

1. This is an Application seeking leave to file Appeal against acquittal order dated 2 May 2024 passed by the learned Special Judge, Securities and Exchange Board of India (**SEBI**). Also impugned is the order passed on 2 May 2024, on Application at Exhibit-11 filed by the accused for compounding of offences directing that the penalty amount would be Rs.5,00,000/- with simple interest at the rate of 6% per annum from 4 October 2002 to 16 September 2010. SEBI is further held entitled to legal charges of Rs.50,000/. It appears that the accused had already deposited an amount of Rs.14,75,00,000/-. SEBI is directed to compute the penalty amount with interest and legal charges and to recover the balance amount from the accused. If the deposited amount is found to be excess, SEBI is directed to bring back the excess amount to the Court. After recording that the entire fine amount is paid, and that compounding application is accepted, by separate order passed at Exhibit-1, the learned Special Judge has discharged the accused.

2. In the peculiar facts of the present case, SEBI is aggrieved by directions issued by the learned Special Judge for deposit of excess amount received from the accused in the Court after reduction of rate of interest to 6%. It appears that after initiation of prosecution the Respondent-accused filed Application at Exhibit-11 for compounding of offence under Section 24A of the SEBI Act. SEBI filed its Reply stating that compounding could be permitted on payment of penalty of Rs.5,00,000/- with interest at the rate of 18% per annum, compounding charges of Rs.3,00,000/- and legal charges of Rs.60,000/-. It appears that in pursuance of Reply filed by SEBI, the Respondent-accused deposited amount of Rs.14,75,000/- with the SEBI during 20 November 2009 to 22 October 2010. However, despite deposit of the entire amount demanded by SEBI, it appears that the compounding application remained pending. It appears that one of the reasons for pendency of compounding application was non-deposit of legal charges of Rs.11,000/- by the Respondent-accused. In the meantime, Respondent-accused went missing and despite making numerous attempts he has not been traced. In the above background, while clearing of old cases the learned Special Judge took up Special Case (SEBI) No.259 of 2006, and by the impugned order, has discharged the accused.

3. So far as discharge of the accused is concerned, Applicant-SEBI has no serious objection. The only objection the SEBI has is to the direction by the learned Special Judge to reduce the interest from 18% to 6% which may result in SEBI refunding sum of the amount deposited by the Respondent-accused. It appears that the Respondent-accused is missing for a long period of time and despite making several

efforts, his presence could not be secured in Court by the learned Special Judge. By filing the present Application, grant of leave requested by SEBI is to ensure that the entire deposited amount is retained by SEBI, which is already deposited in the consolidated fund of India.

4. It appears that even Respondent-accused is not interested in receiving back any portion of the deposited amount. It was the deal accepted by him for compounding of the offence by depositing the entire amount demanded by SEBI by filing Reply to the compounding application. Having voluntarily deposited the demanded amount towards compounding of offence, Respondent-accused is apparently not interested in taking back any portion of the said deposited amount.

5. Considering the above peculiar facts and circumstances of the case, in my view, ends of justice would meet if SEBI is permitted to retain the entire deposited amount by Respondent-accused instead of making it to refund portion thereof.

6. Accordingly, leave is granted to file Appeal against the acquittal order. The Appeal is accordingly admitted and taken up for hearing immediately.

7. Since the compounding amount is paid, there is no warrant for interference in the order of acquittal. However, there was no warrant in the facts and circumstances of the case, for reduction of rate of interest when Respondent has not questioned the rate of interest demanded by SEBI and has already paid the higher rate of interest. It is however made clear that this course of action is adopted in the unique facts and

circumstances of the present case where Respondent-accused is not traceable and apparently not interested in seeking refund of any portion of the deposited amount.

8. Considering the facts and circumstances of the case, order dated 2 May 2024 passed on Application at Exhibit-1 discharging the Respondent-accused is not disturbed and is confirmed. However, order dated 2 May 2024 passed on Application at Exhibit-11 is modified to the extent that the entire amount already deposited by Respondent-accused with SEBI shall be treated as the compounding amount. SEBI shall not bring back any portion of the deposited amount in the Court. To this limited extent, the order dated 2 May 2024 passed on Application at Exhibit-11 shall stand modified.

9. The Appeal is accordingly disposed of. It is once again made clear that the order is passed in peculiar facts and circumstances of the present case. It shall not be treated as precedent in any other cases.

(SANDEEP V. MARNE, J.)

SUDARSHAN RAJALINGAM KATKAM

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