



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.1818 of 2024

S.Sivaramakrishnan,

...Petitioner/4th Accused

Vs.

1.The State

Represented by the Sub – Inspector of Police,
Central Crime Branch – Team I,
Chennai – 600 007.

...Respondent/Complainant

2.Spices Trading Corporation Limited

Represented by its Assistant Manager,
123/255, Lingi Chetti Street,
Chennai – 600 001.

...Respondent/*De-facto* complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Cr.P.C/438 r/w 442 of BNSS, 2023, against the order in Crl.M.P.No.62393 of 2024 (CNR No.TNCHOF0867422024) on the file of the learned Metropolitan Magistrate for exclusive trial of CCB and CBCID cases (relating to cheating cases in Chennai) and dated 18.10.2024.

For Petitioner : Mr.S.Nelson

For Respondent : Mr.S.Udaya Kumar



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Government Advocate (Crl.Side)

ORDER

The revision challenges the dismissal of the discharge petition filed by the petitioner/4th accused on the ground that it was not filed within 60 days from 01.07.2024, when the BNSS Act, 2023 came into force.

2. Mr.S.Nelson, the learned counsel for the petitioner/4th accused, would submit that the offences were committed prior to 01.07.2024, when the BNSS Act, 2023 came into force and therefore, the procedure applicable is that which is provided in the Code of Criminal Procedure, 1973 and relied upon the Judgment of this Court in Crl.O.P.No.25332 of 2024 dated 17.10.2024.

(b) The learned counsel further submitted that in any case, a portion of the documents filed in support of the final report was served on 01.04.2024 and the remaining papers were served on 01.10.2024 and therefore, the petition for discharge was not delayed.

3. Mr.S.Udaya Kumar, the learned Government Advocate (Crl.Side),



submitted that the offences were committed in the year 2008 and the final report was filed in the year 2018.

4. Admittedly the offences were committed prior to 01.07.2024. This Court while interpreting Section 531 of the BNSS Act, 2023, had 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.

(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."

5. In view of the same, this Court is of the view that the learned Magistrate ought not to have dismissed the discharge petition on the ground that the same was not filed within sixty days by applying the provisions of the BNSS Act, 2023. The procedure applicable is the Code of Criminal Procedure. Hence, the impugned order in CrI.M.P.No.62393 of 2024 is set aside and the learned Magistrate is directed to consider the discharge petition on merits in accordance with law.



6. Accordingly, the Criminal Revision Petition is allowed.

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09.01.2025

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

dk

Copy to:

1. The Metropolitan Magistrate
for exclusive trial of CCB and CBCID cases
(relating to cheating cases)
Chennai.

2. The Sub – Inspector of Police,
Central Crime Branch – Team I,
Chennai – 600 007.

SUNDER MOHAN, J.

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SUNDER MOHAN,J.



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The above revision is listed today under the caption 'FOR BEING MENTIONED' at the instance of the learned counsel for the petitioner stating that the name of the learned counsel for the petitioner has been wrongly typed 'S. Nelson' instead of 'Dr.G. Babu' in the appearance column as well as in Paragraph No.2 of the order dated 09.01.2025.

2. In view of the above, the name of the learned counsel for the petitioner in the appearance column as well as in Paragraph No.2 shall be replaced as 'Dr.G. Babu' instead of 'S. Nelson'.

3. Office is directed to incorporate the necessary corrections at the appropriate place and issue fresh order copy forthwith.

28.01.2025

nv

(Note to Office: Issue today (28.01.2025))