(2010) 12 DEL CK 0142

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 1777 of 2010

Startek Plantations and Resorts Ltd. and Others — APPELLANT

Vs

Securities Exchange Board of India — RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 20, 20(1), 21, 226
Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 — Regulation 5(1), 68(1), 68(2), 73, 74
Securities and Exchange Board of India Act, 1992 — Section 24, 27

Citation : (2011) 165 CompCas 186 : (2011) 2 CompLJ 134 : (2011) 108 SCL 599

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Jagjit Singh, for the Appellant; Sanjay Mann, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.

1.By this petition under Article 226 read with Article 227 read with Article 14 and 21 of the Constitution of India, the petitioners have sought quashing of orders of imposition of fine on the petitioners as ordered by the learned trial court vide order dated 4th February 2010.

2. The petitioners were convicted by the learned trial court under Sections 24 and 27 of SEBI Act for violation of Regulation (5) (1) read with Regulation 68 (1), 68(2), 73 and 74 of SEBI CIS Regulations, 1999. Petitioner No. 2 Mr. V.K. Sharma, Director of the petitioner No. 1 company was sentenced to rigorous imprisonment for one year and the petitioner No. 1 company and Mr. V.K. Sharma both were sentenced to pay fine of Rs. 5 lac each, in default to undergo simple imprisonment for six months. The judgment in this case was delivered by the Additional Sessions Judge as the provisions of SEBI Act were amended in 2002 and the jurisdiction to try such cases was of Sessions Court.

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3. It is submitted by the counsel for the petitioners that the offence allegedly committed was prior to 2002 and the case of the petitioners was being heard by learned ACMM in terms of un-amended provisions of SEBI Act and after amendment of 2002, the case was transferred to Sessions Court. He submits that since the offence was committed prior to 2002, the un-amended provisions of Cr.P.C. would be applicable and the sentence of Rs. 5 lac as fine as imposed by learned Sessions Judge was unlawful since the powers of ACMM was only to impose a fine of Rs. 5,000/-. The petitioners relied upon Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and Shaw Wallace and Co. Ltd. Vs. M.P. Beer Products Pvt. Ltd., .

4. In Shiv Bahadur''s case(supra), the Supreme Court made it clear that Article 20(1) in its broad import has been enacted to prohibit convictions and sentence under ''ex post facto'' laws. This article must be taken to prohibit all convictions or subjections to penalty after the Constitution in respect of ''ex post facto'' laws whether the same was a post-Constitution law or a pre-Constitution law. Thus what is prohibited under Article 20 is a conviction or sentence under sustentative ''ex post facto'' law. A trial under a procedure different from what obtained at the time of the commission of the offence or by a Court competent under amended law though different from that which had competence at the time of commission of crime cannot ''ipso facto'' be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular Court or under a particular procedure, except insofar as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved. Thus, trial of the petitioners by the Sessions Court was perfectly constitutional as per judgment cited by the petitioners. Similar preposition was laid down in Mahender Singh''s case(supra) wherein it was held that the Sessions Judge has requisite jurisdiction to entertain the complaint under SEBI Act after amendment of the Act. In Mahender Singh''s case (supra) this Court clarified that the procedure to be followed in respect of such like offences which were committed prior to amendment would be that of summon trial but the trial was perfectly valid even if it was conducted by the Sessions Court as provided under amended SEBI Act.

5. The question now arises whether the Sessions Court can impose penalty more than that which could be imposed by a MM. I consider that there can be no doubt on this aspect. Even an MM after concluding the trial if finds that while his power to impose penalty was only Rs. 5,000/- but the case was such that higher penalty should be imposed, he can refer the matter to Court of CMM so that higher penalty could be imposed. The trial conducted by the Sessions Judge in this case was perfectly in accordance with law and the sentence imposed by the Sessions Judge is also in accordance with un-amended provisions of SEBI Act. The Court of Sessions was not bound by the powers of Court of MM. The Court of Sessions had to exercise its own power of sentencing after convicting the accused and impose sentence according to law.

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6. I find no force in this petition. The petition is hereby dismissed.

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