(2009) 06 MAD CK 0076

In the Madras High Court

Case No : Criminal R.C. No. 238 of 2006

The Reserve Bank of India APPELLANT

Vs

V. Krishnaprasad RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219, 245, 256(2)
Reserve Bank of India Act, 1934 — Section 45QA, 58B, 58C

Citation : (2009) 06 MAD CK 0076

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T. Poornam, for the Appellant; No Appearance, for the Respondent

Judgement

G. Rajasuria, J.—Challenging and impugning the order dated 29.11.2005 passed by the Additional Chief Metropolitan Magistrate, EOW-1,

Egmore, Chennai, in Crl.M.P. No. 3025 of 2005 in E.O.C.C. No. 383 of 2003, this revision case is focussed.

2. The long and short of the facts, which are absolutely necessary and germane for the disposal of this revision would run thus:

The petitioner herein filed the complaint before the Additional Chief Judicial Magistrate, Egmore, Chennai, which was taken on file as E.O.C.C.

No. 383 of 2003 for the offences u/s 45QA read with 58B and 58C of the Reserve Bank of India Act, 1934 (the ''Act''). The learned Magistrate

issued summons to the accused two in number. Whereupon the second accused-the respondent herein filed the Crl.M.P. No. 3025 of 2006

before the said Magistrate u/s 245 Cr.P.C. for discharging him from the complaint, on the main ground that he had resigned his post as Chief

Executive Officer well before the occurrence of the alleged offences, as per the case of the complainant. Whereupon, after hearing both sides, the

learned Magistrate allowed the said application discharging the respondent/A2 from the criminal case. Being aggrieved by and dis-satisfied with the

said order of the learned Chief Judicial Magistrate, this revision is focussed on the following grounds, the sum and substance of the same would run

thus:

The learned Magistrate failed to note that even before the respondent/A2 having allegedly resigned from his post as Chief Executive Officer of the

A1 company, there were violations by him and as such, he cannot wriggle out of his liability.

3. Despite printing the name of the respondent and opportunity having been given, no one represented the respondent. The matter is listed under

the caption ''for orders''.

4. However, the learned Counsel for the revision petitioner has appeared and advanced and developed his argument, inviting the attention of this

Court to the relevant facts that out of 29 orders passed by the Company Law Board, the said company did not make any payment whatsoever

under 11 orders, namely, 7.9.1998, 1.1.1999, 31.8.2000, 29.12.2000, 22.2.2001, 28.2.2001, 15.5.2001, 10.8.2001, 26.9.2001, 29.10.2001

and 16.9.2002. Even though A2 claims to have resigned from his post as Chief Executive Officer of A1 company during June 1999, nonetheless,

the aforesaid two orders passed by the Company Law Board on 7.9.1998 and 1.1.1999 were not complied with by him and for which he is liable,

at least, to that much extent, subject to proving further violation by the prosecution as against A2. his further contention, on his plea.

5. The learned Counsel for the revision petitioner read out the order passed by the lower Court and in that there is no whisper about those material

facts.

6. A bare poring over and perusal of the order of the lower Court would exemplify and demonstrate that the learned Magistrate took it for granted

as though after the alleged resignation by A2 during June 1999 alone, the said orders were issued by Company Law Board for compliance. As

such, it is a clear case of non-application of mind on the part of Magistrate, warranting interference by this Court in revision.

7. I would make it clear that it is not a fit case for invoking the power of the

Magistrate u/s 256(2) of Cr.P.C. for quashing the complaint against

A2 and A2 should have been made to go the hole hog in contesting the matter and thereafter, the Judge was expected to arrive at a reasoned

conclusion. Accordingly, the order dated 29.11.2005 in Crl.M.P. No. 3025 of 2005 in E.O.C.C. No. 383 of 2003 passed by the Chief

Metropolitan Magistrate, Egmore, Chennai, is set aside.

8. Incidentally, when I posed the question to the learned Counsel for the revision petitioner as to whether Section 219 of Cr.P.C. has been taken

into consideration by the complainant or by the Magistrate while dealing with the matter, the learned Counsel, in all fairness, would submit that this

Court might give suitable direction to the Magistrate to adhere to Section 219 of Cr.P.C. Over and above that the learned Counsel also cited the

following decision of this Court reported in 1990 L.W. (Crl.) 404 - Alagasundaram Chettiar and Ors. v. Employees State Insurance Corporation,

etc., an excerpt from it would run thus:

18. Such an interpretation is inevitable, when we consider the object behind this special enactment. When an industrial concern runs into financial

difficulties and suffers loss, and threat of winding up appears to be imminent, notification is issued under the Act, to provide the undertaking with

some breathing time, by keeping pre-existing obligations and liabilities arising out of contracts, assurance of property, agreements etc., to which the

relief undertaking is a party, alive and entering moratorium and staying such proceedings against the relief undertaking. The undertaking, tries to

restabilise its finance, unhindered by litigants, seeking to enforce liabilities against them. This his the limited object behind the act.

9. A bare poring over and perusal of the complaint itself would exemplify and evidence that as many as 11 violations are referred to. As per law,

for each and every violation, there could be separate charge and separate trial also. However, Section 219 contemplates that more than three

violations should not be clubbed together for being tried. Accordingly, the learned Magistrate in this case, while framing charges, should frame

individual charges and three such charges arising within a period of one year shall be clubbed together and accordingly, various trials conducted

and judgements pronounced. The learned Magistrate is expected to dispose of the entire E.O.C.C. within a period six months from the date of receipt of copy of this order.

The criminal revision case is ordered accordingly.

