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Yogendra Kumar Modi Vs. State and anr.

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Court : Delhi

Decided On : Feb-05-2002

Reported in : 97(2002)DLT829

Judge : K.S. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482; Indian Penal Code (IPC), 1860 - Sections 403, 406, 409, 417 and 420

Appeal No. : Crl. M.(M) Nos. 4885, 4886, 4887, 4888, 4889, 4892 and 4896 of 2000

Appellant : Yogendra Kumar Modi

Respondent : State and anr.

Advocate for Def. : Khalil Ur Rehman, Adv.

Advocate for Pet/Ap. : Siddarth Luthra and; Ajay Bhargava, Advs

Disposition : Petition dismissed

Judgement :

K.S. Gupta, J.

1. In this batch of petitions filed by Yoginder Kumar Modi, challenge is to a part of identical order dated 12th December, 2000 passed by a Metropolitan Magistrate

whereby Pir Mohammed or any Executive Officer of Rossel Finance Ltd., Mumbai arrayed as accused No. 2, was allowed to be dropped from the array of accused.

2. Persons imp leaded as respondent No. 2 in these petitions are the complainants who based on different FDRs have filed separate complaints under Sections 403/ 406/409/417 and 420, IPC against the petitioner arrayed as accused No. 3, P. Dinakaran, accused No. 1, Pir Mohammed or any other Executive Officer of Rossel Finance Ltd., accused No. 2 and Ms. Anupama Modi, accused No. 4. In the replies filed to the petitions it is, inter alia, alleged that said Pir Mohammed or Executive Officer (accused No. 2) had been evading service of summons. In Crl. Misc. (M) 1102 and Cr. Misc. 1425/2000 this Court had directed the Trial Court to conclude the trial expeditiously and in any event within six months by the order dated 28th November, 2000. Since Trial Court had been finding it inconvenient to proceed with the complaints owing to non-appearance of said accused No. 2 answering respondents without foreseeing any legal or technical implication under the advice of their Counsel moved application(s) on 12th December, 2000 for dropping the said accused and by the order dated 12th December; 2000 accused No. 2 was dropped from the array of accused in the complaint(s).

3. Submission advanced by Mr. Siddarth Luthra for petitioner was that accused No. 2 could not have been legally dropped from the array of accused as he is the main accused. Excepting the particulars of FDRs, their amounts, dates of issue, maturity dates and maturity amounts as noted in Para No. 1, the averments made in all 7 complaints are by and large identical. In Para No. 2 it is alleged that registered office of Rossel Finance Ltd., for merely known as R.M. Financial Services Ltd. is situated at Sterling Centre, 2nd Floor, Dr. Annie Besant Road, Worli, Mumbai and company maintains branches at New Delhi, Calcutta, Chennai, Bangalore, Hyderabad and Pune. New Delhi branch is situated at 402/403, AVG Bhawan, M-3, Connaught Place. In Para 3 it is stated that the FDR(s) mentioned in Para No. 1 was/were made at New Delhi branch office by payment through cheque payable at Delhi. In Para No. 7 it is further alleged that legal notice dated 30th November, 1998 were sent by registered AD post to accused No. 1 being MD, accused No. 2 Pir Mohammed being Executive Officer, accused No. 3 Yogendra Modi being Director and accused No. 3 Ms. Anupama Modi, being

Authorised Signatory at Bombay office and criminal proceedings are being initiated against all the accused as they failed to pay the maturity amount(s) of the FDR(s) issued by the company. In my view, if respondent No. 2/complainants had chosen to drop accused No. 2 from the array of accused for the reasons noted in said replies the petitioner does not have locus standi to assail that decision as also the order dated 12th December, 2000 whereby name of accused No. 2 was permitted to be dropped from the array of accused. To be noted that power under Section 482, Cr.P.C. under which these petitions have been filed, is to be exercised very sparingly and with circumspection by the Courts. Petitions, thus, deserve to be dismissed on the said score.

Accordingly, aforementioned 7 petitions are dismissed.

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