IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.170 of 2011

State rep. By
The Deputy Superintendent of Police,
Economic Offence Wing-II, Chennai.
(Crime No.3/2000) ...Appellant/Complainant

vs.

1.A.M.O.Harihareswara Rao

2.A.M.O.Gurunarayana Rao ...Respondents/Accused 1 & 2

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment of acquittal of the respondents/accused 1 and 2 dated 09.11.2010, made in C.A.No.174 of 2010 on the file of the Sessions Judge, Chennai.

For Appellant : Mr.C.D.Johnson
for Mr.T.Seenivasan

For Respondent : C.Deepa Nandhini
Government Advocate (crl.side)

J U D G M E N T

The criminal appeal arises out of the judgment of acquittal of the respondents/accused 1 and 2 dated 09.11.2010, made in C.A.No.174 of 2010 on the file of the Sessions Judge, Chennai.

2.The case of the prosecution is that the accused A1 to A5 between June 1994 and November 1999 started a benefit fund by name Thiru-Vi-Ka Nagar Benefit Fund at Chennai by issuing initially pamphlets and then later by advertising in various periodicals promising to pay interest @ 18% for one year fixed deposit, 19% interest for two years fixed deposit, 20% interest for three years fixed deposit and 21% interest for four years fixed deposit. As per the annual statement for the period ending March 1995, there was a balance of Rs.8 Crores and later, it reached Rs.12 Crores. Then the accused deceived the public, induced them to deposit money in various deposit schemes and received Rs.2,22,37.671/- from 600 depositors and to commit criminal breach of trust of the amount so collected and dishonestly misappropriated the money. Thereby, the accused A3 to A5 committed offences of cheating and criminal breach of trust by engaging themselves in the conspiracy abetted by A1 and A2/the respondents herein in the commission of the said offences. Hence, a case has been registered against A1 to A5 n Crime No.3 of 2000 under Sections 420, 409, 120(b) IPC r/w. 109 & 34 IPC, Section 420 r/w. 34 IPC, 409 r/w. 34 & 420, 409 r/w. 109 IPC.

3.After completion of the investigation, charge sheet was filed and the same was taken in C.C.No.4289 of 2002 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. The learned Trial Judge after examining the witnesses convicted A1 and A2/the respondents herein with one year rigorous imprisonment and a fine of Rs.1,000/- each offence under Section 409 IPC and acquitted the accused A3 to A8 of the charges framed against them.

4.The accused 1 and 2/the respondents herein filed an appeal vide C.A.No.174 of 2010 before the learned Sessions Judge, Chennai. The learned Sessions Judge allowed the appeal by setting aside the order of conviction and sentence passed by the Trial Court and acquitted the accused 1 and 2/the respondents herein.

5.Challenging the judgment of acquittal, learned Government Advocate (Crl.side) submitted that the trial Court without considering the oral and documentary evidence erroneously acquitted the accused. It is further submitted that the trial Court has failed to consider Ex.P10, in which, only meager amount has been settled and the amount deposited by the other depositors has been misappropriated. That factum was not considered by the trial Court. Hence, he prayed for conviction of A1 and A2.

6.Resisting the same, learned counsel for the respondents submitted that the petitioner/State has filed a status report, in which, they have fairly conceded that entire amount due to the depositors have been settled. It is further submitted that unless the appellant herein has put forth a point for conviction and also prove that the judgment of acquittal is perverse, the judgment of acquittal cannot be set aside. Furthermore, if two views are possible, the view favouring to the accused can alone be taken into consideration.

7.Considered the rival submissions made on both sides and perused the materials available on record.

8.The learned Government Advocate (crl. Side) appearing for the appellant mainly focusing on Ex.P.10, which is the circular issued. Even though the Trial Court has convicted the appellant, the First Appellate after considering the facts in proper perspective has allowed the appeal and set aside the conviction and sentence. Further, as per the order of this Court in Comp.A.No.745 of 2014 in Comp.Petition.No.216 of 2002, the Company has been taken by the Official Liquidator and the entire amount has been paid to the depositors and there was surplus funds and further, it was stated that 4% interest to be paid. In the status report filed by the Investigation Officer would also show that the entire amount has been paid. So, the First Appellate Court has considered all the aspects in proper perspective and acquitted the respondents/Accused Nos.1 and 2. Unless the order is perverse, this Court cannot interfere with the findings of the First Appellate Court. So, the judgment of acquittal does not suffer from any irregularity nor illegality and consequently, the appeal deserves to be dismissed.

9.In fine,

(i) The Criminal Appeal is dismissed.

(ii) The judgment of acquittal dated 09.11.2010 made in C.A.No.174 of 2010 on the file of the learned Sessions Judge, Chennai, is hereby confirmed. Consequently, M.P.No.1 of 2013 is also dismissed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The learned II Additional Sessions Judge,
Chennai.

2. -Do- The Principal Sessions Judge,
Chennai.

3. The Chief Metropolitan Magistrate,
Egmore, Chennai.

4. The Deputy Superintendent of Police,
Economic Offcens Wing - II,
Chennai.

5.The Public Prosecutor
High Court, Madras.

6.The Record Keeper
Criminal Section, High Court, Madras.

2 ccs to Mrs.C.Deepa Nandhini, Advocate SR 4494

JP [CO]
PSI 12.02.2015