IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-11-2015

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Criminal Original Petition No.7947 of 2012
M.P.Nos.1 and 2 of 2012

S. Natarajan .. Petitioner

Vs.

1. The Union Territory of Pondicherry,
rep.by Superintendent of Police (CID),
Puducherry (Crime No.31 of 2004)

2. The Pondicherry Non-Banking Investors
Protection Association for PNL Nidhi Ltd.,
rep.by its President Govindasamy,
No.159, Ambedkar Salai,
Pondicherry - 1 .. Respondents

(R-2 impleaded as per order of the Court dated 15.10.2015 in M.P.No.1 of 2015)

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure with a prayer to call for the records of the case in C.C.No.1 of 2011 pending on the file of the Principal Sessions Court (designated Court under PPIDFE Act), Pondicherry, and quash the same.

For Petitioner : Mr.S.Ashok Kumar, Sr.Counsel
for Mr.A.Sasidharan

For 1st Respondent: Mr.M.R.Thangavelu,
Additional Public Prosecutor
(Pondicherry)

For 2nd Respondent: Mr.C.Vigneswaran

Reserved on	Pronounced on
15-10-2015	5-11-2015

O R D E R

A Finance Company by name M/s.PNL Nidhi Limited had committed default in repayment of deposits to its depositors, and on the complaint of one such aggrieved depositor by name K.Boodanathan, the first respondent Police registered a case in Crime No.31 of 2004 on 7.12.2004 under Sections 406 and 420 IPC and took up investigation of the case. While the investigation was pending, the Pondicherry Assembly passed the Pondicherry Protection of Interest of Depositors in Financial Establishments Act, 2004, (in short 'PPIDFE Act') which came into force on 15.3.2005.

2. A sister concern of M/s.PNL Nidhi Limited M/s.New Horizon Sugar Mills Limited challenged the action taken against them by the Pondicherry Government under the powers conferred by the PPIDFE Act, which went upto the Supreme Court and the Hon'ble Supreme Court in the celebrated case in New Horizon Sugar Mills Limited v. Government of Pondicherry ((2012) 10 SCC 575) upheld the validity of the Act and dismissed the contentions of M/s.New Horizon Sugar Mills Limited.

3. Be that as it may, investigation in Cr.No.31 of 2004 culminated in respondent Police filing a Final Report in C.C.No.1 of 2011 before the Principal Sessions (designated) Court, Pondicherry for offences under Sections 409, 420, 468, 471, 477A, 212, 120B IPC r/w 34 IPC, Sections 138 and 142 of Negotiable Instruments Act, 1882, and Section 3 of the PPIDFE Act against 16 accused, challenging which S.Natarajan (A-12) is before this Court on the short ground that he was only the Auditor of the Company that had defaulted in repayment, and there are no materials to show his involvement in the offence.

4. The respondent Police have filed a detailed Counter affidavit narrating how the promoters of PNL Nidhi Limited (the principal accused) had started various companies and had syphoned the money collected from public.

5. Before going into the averments in the counter affidavit, it may be apposite to extract the allegations against the petitioner in the Final Report verbatim, which reads thus,

"8. The accused A12 - S.Natarajan, is

the native of Kumbakonam, Senior Auditor to the family of the accused A2 - V.Kannan and A3 -V.Baskaran, and Director of the company from 8.3.1995 to 30.9.2000. THe accused A4-M.Madhavan, was an Ex-employee of City Union Bank, Executive Director (Finance) and whole time Director of PNL Nidhi Ltd., Pondicherry from 24.04.1997 to 05.06.2005. He was also Director of Sri Arunachalam Sugar Mills, Thiruvannamalai, Tamilnadu and M/s.NHSM, Ariyur, Pondicherry.

17. The accused company A1 and the other accused A2 to A14 and A16, who were the Promoters, Directors, Managers and other persons and employees responsible for the management of and conducting the business of the A1 company, fraudulently defaulted to repay the deposit amounts with interest to the complainant and other depositors at the office of the A1 company at No.189, Mission Street from 7.12.2004, amounting to about Rs.57,04,46,691.00 due to illegal impractical and unauthorized diversion of the depositors' money from 1995. The accused A15, A17 to A19 intentionally aided them in such fraudulent defaults in furtherance of the common intention of gaining wrongfully and to cause wrongful loss to the complainant and other depositors.

18. Investigation also reveals that from 1995, on various dates as detailed in Annexure-1, the A1 company and the accused A2 to A17 who were the promoters, Directors, Managers and other persons and employees who were responsible for the management of and conducting the business of the A1 company impracticably diverted and invested the depositors' amounts, with inherent risks in recovering the same when needed, in violation of the directives issued by the Department of Company Affairs, Government of India, in

(1) New Horizon Sugar Mills, Ariyur,

Pondicherry, amounting to Rs.13,44,96,728.00;
(2) Arunachalam Sugar Mills Ltd., Thiruvannamalai, amounting to Rs.28,50,000.00;
(3) Ari Malini Spinning Mills Ltd., Salem (earlier known as PA Mills India Ltd), amounting to Rs.10,57,73,000.00
(4) Sri Lakshmi Packagings, Thepperumanallur, Kumbakonam, amounting to Rs.1,79,98,000.00 in which A2 to A5 are Directors and partners.
(5) PNL Exports Ltd. amounting to Rs.21,50,000.00;
(6) Pondicherry Nidhi Ltd. amounting to Rs.4,33,94,964.00;
(7) Calfin Credit Holdings Pondicherry Ltd. amounting to Rs.4,75,00,000.00;
(8) Binny Ltd. amounting to Rs.7,27,45,704.00.

Thus, the said accused appear to have committed the offence punishable under Section 3 of the Pondicherry Protection of Interest of Depositors in Financial Establishments Act 2004 by deploying the money of the complainant and the other depositors unauthorizedly and thereby defaulting when the deposit money was needed for the repayment of such deposit with such benefit in the form of interest, as promised, with an intention of gaining wrongfully and to cause wrongful loss to the complainant and other depositors, as provided in the proviso to section 3 of the Act."

Thus, even according to the Final Report, PNL Nidhi Limited committed default in repayment of money to the depositors from 7.12.2004, whereas the PPIDFE Act itself came into force only on 15.3.2015, and it is indeed doubtful whether the said penal act could be retrospectively applied.

6. Now coming to the averments against the petitioner in the counter affidavit, it is stated in paragraph 19 as follows:

"19. I submit that the petitioner/12th accused S.Natarajan is the native of Kumbakonam, Senior Auditor, family of the accused A2 V.Kannan and A3 V.Baskaran and Director of the company from 8.3.1995 to 30.9.2000. The accused V.Kannan and V.Baskaran purchased an investment company in the name of Calfin Credit & Holdings (P) Ltd., Chennai from its promoter S.Natarajan and used that company for siphon the PNL Deposits by opening current accounts at City Union Bank, Pondicherry vide A/c.No.214 during the year 1993. He assisted the main accused A2 V.Kannan and A3 V.Baskaran for diversion of funds from PNL to elsewhere and its sister concern. The petitioner was also the director of the company during the relevant period and who had taken decisions along with other directors to divert funds from the company to its sister concerns and to re-pledge the jewels."

Thus, even according to the Police, this petitioner was a Director in M/s.PNL Nidhi Limited from 18.3.1995 to 30.9.2000, and that he has resigned. In support of this, Form-32 has also been produced before this Court, which clearly shows that this petitioner retired as early as on 30.9.2000.

7. Learned Additional Public Prosecutor (Pondicherry) submitted that the money collected from the Depositors were invested in other ventures from 1995 onwards, and therefore as Director this petitioner will be liable for the offences charged.

8. Assuming for a moment that there is diversion of money as alleged by the Police from 1995, can the petitioner be made vicariously liable for IPC offences on the score that he was the Director of the Company during a certain period ?

9. Even according to the police, A-2 and his family members had promoted M/s.PNL Nidhi Limited and collected money from the depositors. Everything was going on fine until 2004, when the Company was unable to make payments to the depositors. Even according to the Final Report, PPIDFE Act itself was passed when huge number of depositors started approaching the Police for redressal. This is averred in paragraph 16 of the Final Report. It is not an offence to collect deposits, and even according to the Final Report the Company was paying only 11 or 12% as interest and was not promising fancy interest that is

normally done by fly-by-night operators in the finance sector.

10. Coming to this petitioner, just because he was a Director in the first accused Company for a period from 8.3.1995 to 30.9.2000, he cannot be made vicariously liable for IPC offences, for the default committed by the Company in the year 2004. Honourable Supreme Court in R.Kalyani v. Janak C.Mehta ((2009) 1 SCC 516) in paragraphs 32 and 33 stated as follows:

> "32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.
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> 33. In Sham Sunder v. State of Haryana ((1989) 4 SCC 630) this Court held: (SCC p. 632, para 9)
>
> > "9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

11. Learned Additional Public Prosecutor (Pondicherry) contended that M/s.PNL Nidhi Limited had diverted funds to its sister concerns of which one is Calfin Credit Holdings Pondicherry Limited, Chennai, in which, it is alleged that this petitioner was a Director. Learned Counsel for the petitioner submitted that this petitioner was a Director in Calfin Credit

Holdings Pondicherry Limited and had resigned from that Company as early as on 12.10.1993 and produced Form 32 concerning that. It appears that the main accused in this case viz., V.Kannan and V.Baskaran have purchased Calfin Credit Holdings Pondicherry Ltd., in 1993. This is stated even in paragraph 19 of the Counter filed by the Police, which has been extracted above. But M/s.PNL Nidhi Limited, which is the principal accused in this case itself was purchased by the prime accused V. Kannan and V.Baskaran only on 24.2.1995 from its earlier promoters, who were running it as Pondicherry Mutual Benefit Fund Limited. The name was changed to M/s.Prasanna Narayana Lakshmi Nidhi Limited, in short M/s.PNL Nidhi Limited, which is the first accused in this case. Thus, M/s.PNL Nidhi Limited itself came into existence only on 24.2.1995, whereas this petitioner had resigned from Calfin Credit Holdings Pondicherry Ltd., as early as on 12.10.1993.

12. In the result, the prosecution against the petitioner in C.C.No.1 of 2011 (Cr.No.31 of 2004) on the file of the Principal Sessions (Designated) Court, Pondicherry is an abuse of process of law, and the same is accordingly quashed, and this petition is allowed.

Sd/-
Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

To

1. The Superintendent of Police (CID),
Union Territory of Pondicherry,
Puducherry.

2. The Principal Sessions Court,
(Designated Court under PPIDF Act)
Pondicherry.

3. The Public Prosecutor (Pondicherry),
High Court, Madras.

+1cc to Mr.C.Vigneswaran, Advocate sr.61816
+1cc to Mr.A.Sasidharan, Advocate Sr.61520

Pre-Delivery Order in
Crl.O.P.No.7947 of 2015

rv[co]
srg 20/11/2015