THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.672 of 2015

ORDER:

1. This Criminal Revision Case is filed by the petitioner-accused No.13 challenging the order dated 9.4.2015 passed in Crl.M.P.No.503 of 2015 in C.C.No.87 of 2006 by the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad.

2. Brief facts of the case are as follows:

The first accused in the above C.C. is a company incorporated under the provisions of the Company Act (hereinafter referred to as "the Act") for which accused Nos. 2 to 8 are directors who originally invited deposits from public through advertisements. The last advertisement was issued on 30-6-1997. A.9 was Managing Director, A.10 was Joint Managing Director of A.1 company. Accused Nos.11, 12, 14, 15, 22 and 23 were directors of A.1 company. Accused Nos.13, 16 to 21 are the present directors of A.1 company. Accused No.24 is the Executive Director during the material period of time and Accused No.25 is a company which entered into an agreement with A.1 company and Accused Nos.25 to 35 are the persons who gave assurance to the Company Law Board. On the application filed by A.1 company represented by A.12, the Company Law Board passed an order on 29-2-2000 issuing certain directions with regard to repayment of deposits which were to mature thereafter over a period of 12 to 48 months. The Company Law Board reviewed the progress of its order dated 29-2-2000 on 2-12-2004 and directed the Registrar of Companies to take appropriate action in terms of Section 58 A (9) and 58A (10) of the Companies Act. Since A.1 had not repaid the matured deposits and A1 failed to comply with the orders of the Company Law

Board as per the scheme formulated by it in spite of extension of time for compliance, the department of company affairs and Regional Director of Company Law Board have received number of complaints from the deposit holders with regard to non-payment of deposit amounts as per the Company Law Board orders. All accused are responsible for the default and they have both individual as well as collective responsibility to discharge the dues to the deposit holders. Therefore, all the accused are liable for punishment under Section 58A (10) for violation of the orders of the Company Law Board.

3. On the complaint lodged by the respondent, the same was registered as C.C.No.14 of 2005. But, the case against the petitioner-A13 was split up and numbered as C.C.No.87 of 2006. The petitioner filed application for discharge earlier before the Special Judge for Economic Offences and the same was dismissed. Subsequently, he filed another discharge application before the learned Special Judge for discharge on the ground that the other accused in the above case were discharged by the learned Special Judge and the said order of the learned Special Judge was confirmed by this Court. The learned Special Judge dismissed the application. Aggrieved by the same, the petitioner-A13 filed the present revision.

4. Learned Counsel for the petitioner submitted that 19 accused in the above crime were discharged by the learned Special Judge and aggrieved by the same, the complainant filed revision and the said revision was dismissed by this Court confirming the order of the learned Special Judge. He further submitted that the petitioner worked as Director only for seven months i.e., from 16.9.2000 to 4.5.2001 and he did not collect any deposits and he was not the Director as on 2.12.2004, when CLB gave directions to initiate prosecution and that the order of this Court in Crl.R.C.Nos.1305 of 2005 & 1778 of 2005 is squarely applicable to the present case. He further submitted that on 18.4.2001, the petitioner had resigned and his resignation was

accepted on 3.5.2001. He further submitted that the present complaint is barred by limitation as it was filed after expiry of three years. He further submitted that the learned Special Judge dismissed the petition filed by the petitioner without considering the order of this Court in Crl.R.C.Nos.1305 & 1778 of 2005.

5. Learned Counsel for the respondent submitted that by way of the advertisement dated 28-6-1996 A.1 company induced many depositors and in the said advertisement, names and addresses of Directors were furnished, and it was stated that the company had no over due deposits other than the unclaimed deposits and it was declared that company has complied with the provisions of the directions applicable to it. He submitted that the company instead of repayment of deposits on maturity as promised in their advertisement, it approached Company Law Board by filing a petition under Section 58A(9) of the Companies Act read with Section 45 of Reserve Bank Act on which Company Labour Board passed scheme order dated 29-2-2000 in Company Petition No.35 of 2000 and as per the said order, fixed deposit amounts are payable as per the directions mentioned in para 11 of the Scheme Order but the company and its Directors had not made any attempt to repay the fixed deposits in terms of the Scheme Order. He further submitted that in view of the Company Law Board Order dated 19-9-2000 the Promotor Director and Group Holding Companies shall continue to be responsible for due compliance of Scheme Order dated 29-2-2000. He further submitted that the company and every officer including Director of the company are jointly and severally responsible for the compliance of the Scheme Order. He further submitted that non-payment of fixed deposits to the deposit holders is clear violation of Section 58 A (5) and Section 58 A (6)(b) of the Companies Act. The non-payment of amounts as per the scheme order constitutes violation of Section 58 A (10) of the Companies Act and the petitioner-accused No.13, who is in the board,

is liable for punishment, irrespective of the fact of his resignation or continuation in the company, He further submitted that the above referred judgment of this Court cannot be made applicable in this case as the case of the petitioner is on different footing and that the petitioner is in board as on the date of non-compliance of the order dated 29.2.2000 and therefore, he is liable for prosecution.

6. The question that arises for consideration in this revision is that whether the petitioner is entitled for discharge.

7. Before going into the merits of the case, it is pertinent to note that some of the accused involved in the case in question filed applications before the learned Special Judge for discharge. The learned Special Judge discharged them. Aggrieved by the same, the complainant filed Crl.R.C.Nos.1305 and 1778 of 2005 before this Court. This Court dismissed the said revisions confirming the order of the learned Special Judge.

8. While so, basing on the above judgment of this Court, the petitioner moved the impugned application for discharge. The learned Special Judge dismissed the said application on the ground that the prosecution is with regard to the non-compliance of order dated 29.2.2000, but not the order dated 2.12.2004 and that the petitioner was on the board as on the date of non-compliance of order dated 29.2.2000. Aggrieved by the same, the petitioner filed this revision.

9. The main contention of the complainant is that the petitioner has violated the scheme order of Company Law Board and he is liable for prosecution under Section 58(A)(10) of the Companies Act, whereas it is the contention of the petitioner that he served as Director for 7 months only i.e., from 16.9.2000 to 4.5.2001 and he did not collect any deposits and he was not a Director as on 2.12.2004, when CLB issued directions to initiate prosecution and that the petitioner stands on the

same footing as that of the other accused, who were discharged by the Special Judge, the order of whom was also confirmed by this Court and therefore, basing on the same, the petitioner seeks to adopt the same analogy in discharging him.

10. Now, the brief facts that remained undisputed are that earlier, the learned Special Judge discharged some of the accused on the ground that a direction under Section 58A(9) of the Companies Act is given only to the company and liability under Section 58A(10) would be fastened only on the company, which has committed default under Section 58A(9) of the Act and the persons, who are in management of the company and that the petitioners therein are not in the management of the company as on the date of order passed by CLB on 2.12.2004. Likewise, in the order in Crl.R.C.Nos.1305 & 1778 of 2005, it is observed that A10 is ceased to be director from 1.9.2000, A8 is ceased to be director from 8.9.2000, A5 is ceased to be Director from 10.9.2000 and A9 is ceased to be Director from 31.1.2001 and thereby, on that count alone, the proceedings against them were discharged. The above persons were ceased to be directors subsequent to order dated 29.2.2000.

11. It is pertinent to note that the Company Law Board by order dated 29.2.2000 formulated the scheme for repayment of deposits while holding that the company and every officer including the Directors of the Company shall be jointly and severally responsible for due compliance of the order, and any failures to comply with this order on the part of the company, its officers and Directors shall attract the penal provision contained under Section 58(A)(10) of the Act. Subsequently, the Company Law Board has reviewed the progress of scheme order and finally passed order dated 2.12.2004 directing the Registrar of Companies, A.P., Hyderabad to take appropriate action against the company and its Directors for violation of the Scheme order. The learned Counsel for the petitioner has relied upon the order

of this Court in Crl.R.C.Nos.1305 & 1778 of 2005, whereunder some of the other accused, who were ceased to be directors of the company after issuance of order dated 29.2.2000, were discharged by confirming the order of the learned Special Judge.

12. The grievance of the petitioner is that he also stood on the same footing as that of the other accused, who were already discharged by the Special Court and therefore, the same benefit may be extended to him, whereas it is the contention of the complainant that non-compliance of order dated 29.12.2000 is to be considered, but not the order dated 2.12.2004.

13. It is significant to note that earlier, the revision petitioner in Crl.R.C.No.1778 of 2005 filed Contempt Case against the promoter Director for violation of orders of Company Law Board in Company Petition No.35 of 2000. In the said Contempt Case, a Single Judge of this Court passed an order holding that the promoter Director of the Company and Director of the Company are liable for punishment under Contempt of Courts Act. Aggrieved by the same, the promoter Director and other Director preferred Contempt Appeal No.3 to 11 of 2007 and a Division Bench of this Court by its order dated 22-8-2008 after considering the fact that the Company Petition No.35 of 2000 was suo moto initiated by the Board and considering the maturity of the deposits of the depositors subsequent to the resignation of the Promoter Director and other Director, allowed Contempt Appeal by setting aside the order of the Single Judge. It appears that aggrieved party approached Hon'ble Supreme Court and the matter is pending before Supreme Court but there is no stay. It is also pertinent to note that while passing the order, the Division Bench had an occasion to observe that the Company Law Board did not fasten any personal liability on the promoter Director of the company to repay the deposit of the depositors and there is no personal liability whatsoever on any of the Directors of the Company and such liability must flow either from

the special contract such as case of guarantee or under any subject statute. It is also relevant to extract the observations of the Division Bench as under:

> "The role of the Promoter Director of the Company was not properly explained anywhere. Therefore, mere allegations against the Promoter Director, who was neither a party nor an authorized representative of the Company, or the other Directors of the Company, who are the appellants in Contempt Appeal Nos.4 to 11 of 2007, cannot make them liable for contempt. The entire ire was against the Company for not repaying the deposits and for that purpose, making allegations against the Promoter Director and the other Directors of the Company, who had resigned long back and the Company (NFL) was taken over by a new management of another Company (MFSL), and with full knowledge of the said fact, making allegations of violation of the Scheme order of the Board indiscriminately in C.A.No.344/634A/SRB/2001 in C.P.No.35 of 2000, dated 21.8.2001, is wholly unwarranted."
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> "Actually, had the depositor, by virtue of permission granted by the Board in the proceedings under Section 634-A of the Act, gone for execution before the competent civil Court, for recovery of the amounts, at least, by this time, he would have recovered the amounts. But, the conduct of the depositor initiating the litigation one after the other, focusing the entire ire on the Promoter Director and the other Directors of the Company, who were not on the Board of the Company, at all, at the point of time when actually the orders passed by the Board under sub-section (9) of Section 58-A of the Act were to be complied with, cannot be appreciated."
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> We are, therefore, of the firm view that for every, and each and every violation, initiation of 'contempt proceedings' is not the only remedy. The said remedy can be invoked, as held by the apex Court as well as the other High Courts, time and again, only in the circumstances, where the dignity and decorum of the Court and its orders are at serious peril, or because of any fraudulent or mischievous method adopted to disobey the orders of the Court willfully."

14. Now, coming to the facts of the case on hand, while passing the order in Crl.R.C.Nos.1305 & 1778 of 2005, this Court mainly relied upon the above observations passed by the Division Bench of this Court in Contempt Appeal Nos.3 to 11 of 2007.

15. Even as per the case of the complainant, the petitioner acted as Director of A1 company from 16.9.2000 to 4.5.2001. From the order in Crl.R.C.Nos.1305 & 1778 of 2005, it is evident that A10 is ceased to be director from 1.9.2000, A8 is ceased to be director from 8.9.2000, A5 is ceased to be Director from 10.9.2000 and A9 is ceased to be Director from 31.1.2001. The above said accused were ceased to be directors of the company like the petitioner herein subsequent to order dated 29.2.2000.

16. In the above circumstances coupled with the judgment of this Court in Crl.R.C.Nos.1305 and 1778 of 2005, this Court is of the view that the case of the petitioner also stood in the same footing as that of the petitioners in the above referred Crl.R.Cs and therefore, the petitioner is entitled for discharge.

17. Accordingly, the Criminal Revision Case is allowed and the petitioner-A13 is discharged for the offence under Section 58A (10) r/w 58A(9) of the Companies Act in C.C.No.87 of 2006 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad.

Justice Raja Elango

Dated: 3.11.2015
Nn.

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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