

THE HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 1129 OF 2014

-

ORDER:

Heard learned counsel for the petitioner as well as the first respondent – State, represented by the Public Prosecutor, and taken as heard the second respondent – accused of Crime No.45 of 2013. It appears that as on date in the crime the police, IV Town Police Station, Visakhapatnam, investigated and filed final report, that was taken cognizance by the Special Court under the Protection of Depositors Act, for the offences punishable under Sections 420, 406, 454, 380 read with 511 of the Indian Penal Code, 1860 (for short, ‘IPC’) and Section 5 of Protection of Depositors Act, Sections 2C, 3 of Prize Chits and Money Circulation Schemes (Banning Act) 1978 read with 120(b) of IPC.

The impugned order passed by the learned Special Judge was on the application of the petitioner herein, who is the owner of the premises, where the accused (R-2 herein) run the business by taken on lease. The application filed was under Sections 451 read with 457 of the Code of Criminal Procedure, 1973 (for short, ‘the code’) to direct the police (investigation officer) to unlock her premises door No.47-3-36, in an extent of 2605 square feet in IV floor of Tribhuvanam, Dwarakanagar, 5th line, Visakhapatnam, as she is the owner of the premises and it was only let out to the accused – second respondent herein and the same is under lock and key of the police without any right and the accused left it and she is entitled to occupy.

The same was disposed of after contest by the impugned order saying the petitioner has admitted that Rs.3,00,000/- is lying with her of the accused as security deposit for the premises and thereby subject to deposit of the said amount of Rs.3,00,000/- with the competent authority, as mentioned in the Act, or in the Court, where the case is pending, directed to unlock or handover the key of the premises to the petitioner by the investigation officer.

The same is impugned in saying such condition of directing the advance amount of rent taken by the landlord from the tenant, to deposit before the competent authority under the Protection of Depositors as uncalled for, is the sum and substance of the present contest.

Under Section 3 of the Protection of Depositors Act, any property belongs to the accused persons is prone to interim attachment by the State Government, that is subject to finality, after enquiry under section 6 of the Act by the competent court, including on any claims thereon in passing the final order. It is not only such of the attachment property, which is made under Section 3 read with Section 6 of the Act, liable for distribution among the creditors of the accused person, whose deposits were collected and failed to pay within the meaning of Section 2(b) of the Act, and without seeking even such attachment the premises cannot be kept in lock and key, that too when premises not of accused of the case. So far as the order for delivery of the property concerned it includes, immovable property within the meaning of property covered by Chapter XXXIV of the Code, vide Sections 451 to 459 same is fortified by an expression of this Court reported in 1986 (1) APLJ 384. Here, it is not EVEN delivery of property, but only handing over of the key, as THE PREMISES ARE kept under the lock and key of the investigation officer and the investigating officer not even seized any movable property therefrom. Having regard to the above, the direction of the learned Special Judge for handing over the key by the investigation officer, who kept the premises under lock and key to the petitioner holds good; the further direction to deposit the advance amount taken by the landlord from the tenant before the competent authority even without specifying before whom the amount is to be deposited in alternative before the Court, is unsustainable, as the same is not prone for distribution, without attachment as per the provisions of Sections 3 and 6 of the Act.

It is needless to say, it is left open to the investigating agency or the other competent authority concerned to seek interim attachment and further to make absolute, any amount out of it available, subject to first charge of the landlord for any arrears of rent and for any damages caused to the premises while leaving premises as per the lease terms, if at all to make available that also to distribute among the creditors of the accused, who are the victims. Needless to say, while handing over the key, the investigation officer is required to conduct search of the premises and can seize any incriminating material to support complicity of accused to the crime or any valuables in the premises as per panchanama and list out and either handover to safe custody of the petitioner (owner of the premises) or in police custody.

Accordingly, this petition is ordered setting aside the order of the learned Special Judge passed in CrI.M.P. No.882 of 2013 in Cr.No.45 of 2013 to the extent of

directing to deposit Rs.3,00,000/- as advance. The time granted to handover key of the premises by the police IV Town Police Station, Visakhapatnam, is extended by two months from today and meantime, it is left open to the police concerned, to make any interim attachment for the so called amount or for any valuable properties in the premises, apart from seizure of any incriminating material through search proceedings and to handover any other articles etc., as per list to petitioner for safe custody if not chosen to keep in police custody.

Miscellaneous petitions, if any pending in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.28.09.2015

bv