THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1158 OF 2012

ORDER:

1 This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order dated 01.06.2012 passed in CFR No.1158 of 2002 in C.C/FD/2011 on the file of the Principal Sessions Judge's Court, Guntur, wherein and whereby the complaint filed by the petitioners under Sections 3 to 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999 (hereinafter, in short, referred to as 'the Act') was rejected.

2 The facts leading to filing of the present revision case are, briefly, as follows:

3 First respondent is a partnership firm registered under the provisions of the Indian Partnership Act for the purpose of carrying on finance business including receiving of deposits. Respondent Nos.2 to 6 are partners of the first respondent firm. The second respondent, being the managing partner of the first respondent firm, borrowed money on behalf of the first respondent from various persons including the petitioners by executing promissory notes. The second respondent made part payment and the same is reflecting on the promissory notes. Respondent Nos.2 to 10 failed to repay the money to the petitioners with an ulterior motive. The acts committed by the respondents will fall within the provisions of the Act. Hence the complaint.

4 The contention of the learned counsel for the petitioners is three fold – **1)** The trial Court misconstrued the provisions of the Act and rejected the complaint filed by the petitioners on untenable grounds, **2)** the trial Court failed to consider that the amounts borrowed by the

respondents will fall within the definition of 'deposit' under Section 2 (b) of the Act, and **3)** if the order passed by the trial Court is allowed to sustain, certainly, it would amount to miscarriage of justice, therefore, it is a fit case to set aside the order passed by the trial Court by exercising revision jurisdiction.

5 In support of the arguments, the learned counsel for the petitioners has drawn my attention to the following decisions:

Poppatlal Shah, Partner of Messers. Indo Malayan Trading Co. vs. The State of Madras, rep. by the Deputy Commercial Tax Officer, Sowcarpet, Madras[1] wherein the Hon'ble apex Court held at para No.7 as follows:

> **7.** It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself…………

State of West Bengal vs. Union of India[2] wherein the Hon'ble apex Court held at para No.13 as follows:

> **13**……….A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the act cannot be used to cut down the generality of the words used in the Statute.

The State of Punjab vs. The Okara Grain Buyers Syndicate Ltd., Okara and another[3] wherein the Hon'ble apex Court held at para No.14 as follows:

> **14**……….In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd and Others[4] wherein the Hon'ble apex Court held at Para No.33 as follows:

> **33.** Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must

be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in *Srinivasa* and we find no reason to depart from the Court's construction.

Atma Ram Mittal vs. Ishwar Singh Punia[5] wherein the Hon'ble apex Court held at Para No.9 as follows:

9. Judicial time and energy is more often than not consumed in finding what is the intention of the Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are entire the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law……….

Kehar Singh and Others vs. The State (Delhi Admn.)[6] wherein the Hon'ble apex Court held at Para Nos.228 and 229 as follows:

228. During the last several years, the "golden rule" has been given a go-by. We now look for the "intention" of the legislature or the "purpose" of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

229. Let me here add a word of caution. This adventure, no doubt, enlarges our discretion as to interpretation. But it does not imply power to us to substitute our own notions of legislative intention. It implies only a power of choice where differing constructions are possible and different meanings are available.

6 ***Per contra***, the learned counsel for the respondents strenuously submitted that even if the allegations made in the complaint are, ex facie, taken to be true and correct, no prima facie case is made out against the petitioners under Sections 3 to 5 of the Act. The learned

counsel further submitted that the present complaint is not maintainable as the first respondent was not in existence as on the date of filing of the complaint. It is their further submission that the trial Court has rightly drawn a distinction between 'deposit' and 'negotiable instrument' and rejected the complaint by assigning cogent and valid reasons. The learned counsel lastly contended that this Court shall not lightly interfere with the order of the trial Court unless there is an error apparent on the face of it.

7 Now the point for consideration in this Criminal Revision Case is 'whether there is any illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court?

***POINT*:**

8 Even as per the allegations made in the complaint, respondent Nos.7 to 10 are neither partners of the first respondent firm nor executants of the promissory notes. Merely because they are close associates to respondent Nos.2 to 6, by itself, they cannot be prosecuted by fastening vicarious liability on them. The principles of vicarious liability are not applicable to the criminal *juris prudence*. It is not the case of the petitioners that respondent Nos.7 to 10 are conspirators. Even assuming, but not conceding that they are conspirators, the complaint is not filed under Section 120-B of IPC. Viewed from any angle, factual or legal, the complaint is not maintainable against respondent Nos.7 to 10.

9 Undisputedly, respondent Nos.2 to 6 are partners of the first respondent firm, which carried on finance business. Respondent No.5 filed O.S.No.182 of 2004 on the file of the Court of the I Additional Junior Civil Judge, Thenali for dissolution of the first respondent firm and rendition of accounts. After full fledged trial, the said suit was

decreed on 01.04.2005. Even as per the allegations made in the complaint, the second respondent borrowed money on behalf of the first respondent firm prior to its dissolution, of course, he made some part payments subsequently also. But, unless and until the decree passed in O.S.No.182 of 2004 is set aside by a competent Court, the same is legally enforceable. It is not the case of the petitioners that the judgment and decree passed in the said suit was set aside by the appellate Court. The first respondent is not in existence with effect from 01.04.2005. The petitioners filed the complaint on 30.04.2011 i.e. nearly six years after the dissolution of the first respondent firm. No civil or criminal case can be maintainable against a partnership firm, which is not in existence as on the date.

10 Let me consider whether the petitioners have prima facie satisfied the ingredients of Section 5 of the Act to issue process to the respondents.

11 The main object of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 is to protect the interest of the depositors. The first respondent is a financial establishment as defined under Sub-Section (c) of Section 3 of the Act and it carried on business for some time. In order to appreciate the contentions of the rival parties, it is apposite to extract hereunder Sub-Section (b) of Section 2 of the Act, which reads thus:

> "**Deposit**" means the deposit of a sum of money either in lump sum or installments made with a financial establishment for a fixed period, for interest or return in any kind.

12 A perusal of the above clause clearly demonstrates that the word 'deposit' is not defined under the Act. Law Lexicon dictionary 1997 Edition defines 'deposit' as - Thing stored or entrusted for safe keeping. In other words it can be said that it is an act by which a

person receives the thing or another person, with the obligation to keep it and to return it in kind. According to Marriam Webster, deposit means - to place especially for safekeeping or as a pledge, especially, to put in a bank. According to Chambers dictionary New Edition, deposit means – something entrusted to another's care, especially, a sum of money put in a bank; a pledge; a bailment where one entrusts goods to another to be kept without recompense. A person who receives deposit is called depositary and the person who makes deposit is called depositor.

13 It is not the case of the petitioners that they have deposited money with the first respondent firm for a fixed period at the agreed rate of interest. The petitioners have not filed any deposit receipts indicating the terms and conditions of the deposit. Failure on the part of the financial establishment in repayment of deposit money or interest within the stipulated time is *sine qua non* to prima facie attract Section 5 of the Act which is a penal provision. A perusal of various provisions of the Act clearly demonstrates that the Special Court constituted under Section 6 of the Act is empowered to take cognizance of offence under Section 5 of the Act. Incidentally, the Special Court can try the offences under the IPC also along with the complaints filed under Section 5 of the Act. But the Special Court is not empowered to take cognizance of offences under the provisions of IPC independently, without taking cognizance of the offence under Section 5 of the Act.

14 The petitioner got issued a legal notice to the respondents herein on 09.04.2011 i.e. just 20 days prior to filing of the complaint. It is not out of place to extract Para Nos.4 and 18 of the legal notice hereunder:

4. That No.1 among you represented by No.2 among you have borrowed a sum of Rs.(a) 42,000/- on 16.06.1996 and (b) Rs.40,000/- on 26.09.1996 from my 1st client for the purpose of meeting business of No.1 among you and executed two separate promissory notes on the even dates in favour of my 1st client in the hand writing of No.2 among you agreeing to repay the same together with interest at the rate of @18% p.a. on annual rests either to 1st client or his order on demand.

18. That my clients also came to know that all of you are trying to change the existing physical features of properties and Nos.1 to 6 among you are also trying to flee away from the place of your ordinary residence with an intention to avoid and evade the payment of the amounts due to my clients and other General Body of the Creditors. In view of the same, it is not wise on the part of my clients to give further time for you for repayment of the amounts due to my clients. If, Nos.1 to 5 among you fails to pay the amount due to my clients and create documents or transactions in respect of the properties lying in your names either in the names of Nos.7 to 9 among you or anybody, you are yourselves making liable to be prosecuted not only civilly, but also criminally and as well as under the provisions of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999.

15 Complaint is replica of the legal notice. In the case on hand, the sum and substance of the legal notice as well as the complaint is one and the same. In the complaint it is not mentioned that the petitioners have deposited money with the first respondent firm. Similarly, nowhere it is mentioned that how the provisions of the A.P. Protection of Depositors of Financial Establishments Act, 1999 are applicable to the facts of the case on hand. Even as per the case of the petitioners, the second respondent executed promissory notes in favour of the petitioners. Section 4 of the Negotiable Instrument Act defines 'promissory note' which reads as under:

Section 4 - Promissory note:

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

16 The relationship between the parties under promissory note is promisor and promisee. In the instant case, the relationship between the petitioners and the first respondent is promisee and promisor just like creditor and debtor. It is not the case of the petitioners that they have deposited money with the first respondent for a fixed period with specific rate of interest. It is not the case of the petitioners that the first

respondent failed to return the deposit money along with accrued interest. Therefore, the first respondent will not fall within the scope of depositary.

17 Viewed from any angle, factual or legal, I am unable to accede to the contention of the learned counsel for the petitioners that the transaction between the petitioners and the first respondent will fall within the ambit of 'deposit' as defined under Section 2 (b) of the Act. To substantiate the argument, the learned counsel for the petitioners is mainly harping on Sub-Section (c) of Section 2 of the Act, which reads as under:

> '*Financial Establishment*' means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a cooperative society owned or controlled by any State Government or the Central Government or a banking company as defined under Clause of Section 5 of the Banking Regulation Act, 1949,(Central Act 10 of 1949).
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> (Underlined by me)

18 The predominant contention of the learned counsel for the petitioners is that the word 'in any other manner', as used in Section (c) of Section 2 of the Act, encompasses in it every transaction that has taken place between the financial establishment and the individuals. Sri Vedula Venkata Ramana learned Senior Counsel appearing for the 8th respondent strenuously submitted that while interpreting the penal provisions, the Court cannot give liberal interpretation to the words used in it. To substantiate the same, he laid emphasis on the legal maxim *'Ejusdem Generis'* which means 'of the same kind', and which is used to interpret loosely written statutes. The sum and substratum of the word *'Ejusdem Generis'* is where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. The Rule, according to it, is that where particular

words have a common characteristic i.e. of a class, any general words that follow should be construed as referring generally to that class, but, no wider construction should be afforded.

19 It is a golden principle of Law of Interpretation that a part of the section cannot be read in isolation of other part. In order to ascertain the scope of the provision, one has to read the entire provision harmoniously. Sub-Section (c) of Section 2 of the Act deals with accepting the deposit under any scheme or arrangement or in any other manner. Here, the words 'in any other manner' cannot be interpreted in isolation with the other part. Accepting deposit by the financial establishment in any scheme or arrangement or in any other manner and failure to repay the deposit within the stipulated time is *sine qua non* to invoke Section 5 of the Act. Here the words 'in any other manner' are deployed in the context of accepting the deposit but nothing more or less. Had it been the intention of the legislature to bring the relationship of primisor and promisee or depositor and depositary within the purview of Sub-Section (c) of Section 2 of the Act, certainly, it might have specifically used the word promissory note also in the above section. The relationship of promisor and promisee / debtor and creditor cannot be equated with that of depositary and depositor. Mere using of word 'deposit' in the legal notice as well in the complaint, that itself would not amount to establishment of prima facie case. The tone and tenor of the legal notice and the complaint clearly demonstrates the relationship between the petitioners and the first respondent as only a promisee and promisor or creditor and debtor. Mere failure on the part of the financial establishment to repay the amount borrowed under a promissory note would not attract the provisions of the A . P . Protection of Depositors of Financial

Establishments Act, 1999. The remedy available to the promisee is to approach a competent civil court for recovery of the amount.

20 Viewed from any angle, factual or legal, I am unable to accede to the contention of the learned counsel for the petitioners that the transaction between the petitioners and the first respondent will fall within the ambit of Sub-Section (c) of Section 2 of the Act to knock the doors of the Criminal Court by the petitioners by invoking Section 5 of the Act.

21 The learned counsel for the petitioners submitted that the respondents herein have cheated the public at large by collecting huge amounts. No doubt, in the instant case, the first respondent borrowed money from the petitioners by executing 25 promissory notes. The Court has to pass orders within the four corners of the law. Showing some sympathy, the Court cannot come to the rescue of the parties by circumventing the provisions of the Act more particularly penal laws. Sympathy, however great, shall not dispense with the legal procedure to be followed by the Court, more particularly, by the Special Court constituted under a special enactment.

22 Undisputedly, the first respondent was not in existence as on the date of filing of the complaint. Taking cognizance of offence against the partners of a non-existing partnership firm would certainly amount to abuse of process of law, which eventually leads to miscarriage of justice. The material placed before Court is bereft of the ingredients of Section 5 of the Act in order to proceed against the respondents.

23 The learned counsel for the respondents has drawn my attention to the ratio laid down in ***Sunil Bharti Mittal vs. Central Bureau of Investigation***[7] wherein the Hon'ble apex Court held at Para Nos.48

and 52 as follows:

> **48.** *Sine qua non* for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.
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> **52.** A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

24 Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the trial Court has considered various factual and legal aspects and arrived at a conclusion that the complaint is not maintainable. By any stretch of imagination, it cannot be presumed that the order passed by the court below is not based on material placed before it. The reasons assigned by the court below while rejecting the complaint are supported by material available on record. There is no illegality or irregularity in the order passed by the trial Court which warrants interference of this Court while exercising revisional jurisdiction under Sections 397 and 401 Cr.P.C. Viewed from angle i.e. either factual or legal, this revision case lacks merits and is liable to be dismissed.

25 Accordingly, this Criminal Revision Case is dismissed as devoid of merit. As a sequel, the miscellaneous petitions, pending in this Revision Case, if any, shall stand closed.

T. SUNIL CHOWDARY, J

Date:10th August, 2016

Kvsn

[1] AIR 1953 SC 274

[2] AIR 1963 SC 1241

[3] AIR 1964 SC 669

[4] AIR 1987 SC 1023

[5] AIR 1988 SC 2031

[6] AIR 1988 SC 1883

[7] (2015) 4 SCC 609