

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.1573, 1578 & 3273 of 2016

COMMON ORDER:

These three revision cases were filed respectively by A.1 – Raja Homes Pvt. Ltd., of Cr.No.18 of 2014, impugning the respective orders of the learned Special Judge under the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short “the Act”) cum II Addl. Metropolitan Sessions Judge FAC Metropolitan Sessions Judge, dated 18.06.2015 in CrI.M.P.No.976 of 2015; dated 28.10.2015 in CrI.M.P.No.1534 of 2015 and dated 08.12.2015 in CrI.M.P.No.1533 of 2015.

The three petitions were filed in Cr.No.18 of 2014 of III Town Police Station against as many as 17 accused respectively from the interim attachment passed by the State of Andhra Pradesh, pursuant to the powers under Sections 3 and 4 of the Act, issued in G.O.Ms.No.67 Home (General-2) Dept., dated 30.05.2015, G.O.Ms.No.114 Home (General-A2) Dept., dated 20.07.2015 and G.O.Ms.No.99 Home (General-A2) Dept., dated 30.06.2015 of the movable and immovable properties and the same when sought for making them absolute by approaching the learned Special Judge, the learned Special Judge passed the impugned order respectively by allowing the petitions and making the respective interim attachments ordered by the Government absolute, for no claims and no tenable objections from the accused.

In the revisions, mainly the impugment is, there was no opportunity much less by service of notice and it is against principles

of natural justice in passing an order taking away the valuable right to property without notice and the orders are thereby liable to be set aside by remitting the matters back to the learned Special Judge to re-enquire by affording opportunity.

A perusal of the counter filed on behalf of the Police/investigating agency, represented by learned Public Prosecutor, shows that notice was served to the parties to the address given in their anticipatory bail applications; those were returned as un-served for “no such persons” and notice was in fact served to their Advocate, who moved the anticipatory bail applications, by name Sri Y.N. Rao. There is no proof of record and the same was not even noted by the Court in the impugned orders and the impugned orders show that none appeared for the respondents and not even Sri Y.N. Rao, Advocate, appeared. In fact, the appearance of the said Y.N. Rao, Advocate, for them, as can be seen is only for moving the anticipatory bail application and nothing shows, the same appearance continued. When such is the case, where a personal notice is contemplated and without notice and without affording opportunity of hearing, when the impugned orders are passed making the attachment absolute, the same is liable to be set aside. Even the docket orders called for from the learned Special Judge, nowhere show, on the date of passing of the order, the criminal case is posted for hearing even.

Accordingly, and, in the result, revisions are allowed to the extent indicated above, by setting aside the impugned order insofar as accused No.1 and the matters are remitted back to the learned Special

Judge to inquire afresh and with liberty to the lower court if other accused also chosen to appear by virtue of this order from the observation supra to permit them also to contest for decision on merits.

As the impugment is only by accused No.1, M/s. Raja Homes Pvt. Ltd., the impugned order is set aside only in relation to accused No.1, with a direction to A.1-petitioner to appear in person or through Advocate before the learned Special Judge on 10.04.2017 without any further notice and file counter, if any, by that time, for the learned Special Judge to fix hearing afresh and for inquiry. It is made clear from the say by the accused No.1 that he cause file appearance of other accused also by 10.04.2017 before the lower court, in such an event the lower court can consider the other accused also to have their say in the attachment and to pass common order.

March 30, 2017
MRR

Dr. B. SIVA SANKARA RAO, J