THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15475 OF 2016

ORDER:

This criminal petition, under Section 482 of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.'), is filed to quash the proceedings in Crime No.460 of 2016 of Saroornagar Police Station, Cyberabad, registered for the offences punishable under Sections 420, 406 read with 34 IPC and Section 4 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short, 'the Act') against the petitioner and others.

The main contention of the petitioner before this court is that the petitioner is no way concerned with the collection of deposits and he is only one of the depositor along with other depositors. In the complaint dated 04.07.2016 lodged with the Circle Inspector of Police, Saroor Nagar P.S. by Dr.Ahmed Kaleemullah, who is the second respondent herein, made certain allegations against Mohammed Jahangir Pasha, Syed Irshad Hyder, Mohammed Irfan and others, but no complaint was lodged against the petitioner herein. Therefore, taking advantage of this complaint, it is contended that the petitioner is no way concerned with the offence.

But as seen from the remand report filed along with complaint, the petitioner is also an employee and he along with A.3 to A.9 encouraged other accused by giving assurance that 3 to 5% commission will be paid to them for introducing new investors and for the investors, assured 7 to 15% commission each month, and due to encouragement of large number of investors invested huge amount of Rs.15,52,15,000/-. The role played by the petitioner is discovered during investigation by the police and the petitioner is also an employee of the group, though who encouraged the other accused, to collect deposits making promises for payment of commission etc.

But the contention of the petitioner is that he is not an employee, he is only depositor, such disputed question of fact cannot be decided at this stage, when the matter is pending for investigation.

However, according to Section 5 of the Act, where any financial establishment defaults in the return of the deposit either in cash or kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extent to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakh. Thus the petitioner being an employee allegedly is liable for imprisonment, if the offence is proved.

The word 'financial establishment' is defined under Section 2 (c) of the Act, which includes 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 co-operative Society owned or controlled by any State Government or Central Government or a banking company as defined under clause (c) of Section of the Banking Regulation Act, 1949.

Therefore, the petitioner being the alleged employee is liable for punishment under Section 5 of the Act, the case against the petitioner if proved during trial only, but not at the stage of investigation. Hence, at this stage, it is difficult to accept contention of the petitioner.

That apart the allegations made in the remand report based on investigation by the police would disclose *prima facie* material and it would constitute the offences punishable under Sections 420, 406 read with 34 IPC and Section 5 of the Act. Therefore, I find no ground to quash the proceeding at this stage.

In the result, the criminal petition is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 31.10.2016
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