

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15410 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in C.C.No.4 of 2015 on the file of Principal District & Sessions Judge, Karimnagar, for the offences punishable under Sections 420, 406 I.P.C, Sections 3 & 5 of A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short 'Act').

The allegation made against the petitioners is that the petitioners are running chit fund company on the name and style as "Swarna Mayura Chit Funds Private Company" in H.No.2-10-645, Jyothinagar, Karimnagar registered under the Companies Act, 1956. It is the case of the prosecution that the petitioners requested the 2nd respondent to join a chit subscriber for the Chit GRMT-1 of the value of Rs.3,00,000/- payable in 30 months at Rs.10,000/- per month as subscription. The 2nd respondent joined the chit and paid the chit instalments regularly, to a tune of Rs.2,60,000/- for 26 months and became successful bidder and he had furnished all the required information and sureties for the release of the prize amount and the petitioners were satisfied with the sureties furnished by the 2nd respondent. Further, since July 2014, the petitioners started evading repayment of the chit amount, though the 2nd respondent has been moving behind him. Since then, the petitioners are postponing the payment of the said amount. It is also alleged that the petitioners also avoided payment of various amounts to the subscribers of chits.

The only contention before this Court is that the petitioners would not come within the definition of 'Financial Establishment', thereby the alleged offences would not fall within Section 5 of the Act.

Section 5 of the Act deals with 'penalty for default' which reads as follows:

"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 extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakh."

Section 2 (c) of the Act deals with 'Financial Establishment' which reads as follows:

"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 co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949, (Central Act 10 of 1949).

In ***Pothani Chandrasheker and others v. State of A.P.***¹ this Court held that where the complaints made by the deposits disclosed the offence of cheating as well as the offence under Section 5 of the Act, no further enquiry into the matter is warranted. It is now axiomatic in a petition for quashing a criminal case or FIR, the Court shall be cautious and the power should be exercised in rare cases with abundant circumspection having regard to the fact that an accused person has number of remedies under the Code of Criminal Procedure to prove his innocence as well as to get fair justice.

¹ 2005 (2) ALT (Crl.) 424

In view of the law declared by this Court, the Court can exercise power under Section 482 of Cr.P.C with great care. By applying the principle laid down by this Court in the judgment referred supra to the present facts of the case, the petitioners did not return the chit amount paid by various subscribers and it would attract the offence punishable under Section 406 of the Act on the face value of the allegations made in the charge sheet. Therefore, the applicability of the provisions of the A.P. Protection of Depositors of Financial Establishment Act, 1999, has to be considered by the Trial Court at the time of framing charges and decide the matter in accordance with law.

With the above direction, the criminal petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.10.2016
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