

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :06.04.2017

PRONOUNCED ON : 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.409 of 2017
and
Crl.M.P.Nos.3804 & 3805 of 2017

1. Viswapriya Financial Services & Securities Limited,
(Now Viswapriya India Ltd.)
represented by its Director,
R.Subramanian,
Registered Office at No.2,
First Cross Road, Kasturba Nagar,
Adyar, Chennai -600 020.
2. R.Subramanian
Director,
Viswapriya Financial Services & Securities Limited,
No.4/309-A, Singaravelan II Street,
Chinna Neelangarai,
Chennai - 600 041.Petitioners/Accused 1 & 2

vs.

The Reserve Bank of India
represented by Shri Raj Kumar
Department of Non-Banking Supervision,
Chennai Respondent/Complainant

Criminal Revision preferred under Section 397 and 401 Cr.P.C., against the impugned order of the learned Additional Chief Metropolitan Magistrate(E.O.I), Egmore, Chennai-8 dated 14.02.2017 in Crl.M.P.No.2988 of 2016 in EOCC.No.343 of 2009 and to set aside the same.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr. T.Poornam

ORDER

The revision has been filed challenging the order dismissing the petitioners' application, filed under Section 245 Cr.P.C., to discharge them from the criminal case.

2. The petitioners are accused 1 and 2 in EOCC.No.343 of 2009 on the file of the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai. They stood charged for the offences under Sections 58 B(2), 58B(5)(aa) r/w. Section 58 C of the Reserve Bank of India Act 1934. (herein after called "Act"). After framing of the charge, the petitioners and others had filed an application under Section 245 Cr.P.C to discharge them from the above charges. The trial Court dismissed the application and challenging the same, the present revision has been filed.

3. The case of the respondent/complainant, in brief, is as follows:-

The first petitioner company is a non-banking financial company as defined under Section 45-I(f) of the said Act, having its registered office at Chennai and a Certificate of Registration (herein after referred as "COR") was also issued to the first petitioner in the year 1998, to carry on the business of non-banking financial company with specific conditions that it should not accept public deposits and in case, they wanted to raise any public deposits, prior permission from the Bank shall be obtained after furnishing necessary credit. But in violation of the same, the first petitioner company accepted public deposits under the guise of various investor schemes in violation of the directions issued by the Reserve Bank of India (RBI). Subsequently, on inspection by RBI, it revealed that the first petitioner company was operating the investor schemes in violation of the Bank's direction and its net owned fund was also negative. Hence, the COR issued to the first petitioner's company, was cancelled by an order dated 06.08.2005. Challenging the above order, a statutory appeal has been preferred by the petitioner company before the Government of India, Ministry of finance, and the same is still pending.

4. In the order of cancellation, it has been clearly mentioned that the first petitioner company still continues to be governed by the relevant provisions of the Act and the company shall not raise any public deposits, and also should comply with the provisions of the Act as applicable to the non-banking financial company and it should abide by all the directions, guidelines and instructions issued by RBI as applicable to the non-banking financial company, and not to accept public deposits. Subsequent to that since the first petitioner's company did not submit their Returns to the Reserve Bank of India, a letter dated 17.08.2015 was issued with some

directions under Section 45 K of the Act, directing the first petitioner company to furnish certain details and also directed the company to repay the deposit received from the public on the due dates, and to submit the Returns in the prescribed forms. But the first petitioner company did not comply with the directions and not submitted the Returns and did not file the other details as required by the Reserve Bank India.

5. Subsequently, in the month of February 2009, the first petitioner company issued advertisement for selling investment products with the assurance of generous returns. Thereafter, another direction was issued for inspection under Section 45 N of the said Act to the petitioner company for inspection of the books of accounts of the company and requested the petitioners to extend the assistance and co-operation for inspection of accounts and the Reserve Bank of India also appointed two officers for the purpose of inspection of accounts and other records.

6. Thereafter, since no sufficient information was filed by the first petitioner company, another direction was issued to them to furnish necessary details enabling them to scrutinize the books of accounts, for which, the first petitioner company had sent a reply dated 16.02.2009 disputing the notice issued by the Reserve Bank of India on the ground that the first petitioner company cannot be subjected to any inspection under Section 45 N of the said Act on the ground that the principal business of the company not being financing, the Reserve Bank of India has power of regulation only in respect of non banking finance company and the petitioner, not being a financing company, they cannot invoke the power under Section 45 N of the said Act. The RBI can invoke the provisions of Section 45 N of the said Act only after applying the test as to whether the first petitioner is non banking financial company or not.

7. The first petitioner company being a non banking institution cannot deny the access to its books of account to the officials of the Bank to conduct enquiry and any person responsible for non-compliance of the provisions of Section 45 N of the Act would be punishable with fine under Section 58 B(2) of the Act. Under Section 45 M of the said Act, it is the duty of every non banking institution to furnish the statements, information or particulars called for and to comply with any direction and in violation, the petitioners are punishable under Section 58B(5)(aa) of the said Act. Since the offence was committed by the first petitioner company and other accused, who are the Directors of the company, at the time of commission of offence by the company, and they were incharge of and responsible for the conduct of the business of the first accused company, a complaint has been filed by the respondent for the

offences under Sections 58 B(2), 58 B 5(aa) of the said Act against the petitioners.

8. The Court below, after taking cognizance of the offences and after examining the witnesses, found that there is a prima facie case made out against the petitioners and framed charges for the offences under Sections 58 B(2), 58 B (5)(aa) r/w. 58 C of the said Act. Thereafter, the petitioners came out with an application under Section 245 Cr.P.C to discharge them from the above charges. The Court below, after considering the case, on merits, dismissed the said application. Challenging the order of dismissal, the present revision has been filed by the accused.

9. Mr. Prakash Goklaney, learned counsel appearing for the petitioners would submit that the Court below failed to consider the petition of the petitioners in proper perspective and mechanically dismissed the same. The court below failed to consider the fact that the first petitioner/A1 company is ceased to be a non banking financial institution in the year 2005 itself and without deciding the issue, whether the petitioner/A1 company is a non banking financial company or not, proceeded to hold that the petitioner is a non banking financial company and came to the conclusion that no case is made out to discharge the petitioners. When the COR issued to the petitioner was cancelled in the year 2005 itself and appeal is pending against the order of cancellation and based on the COR issued to the first petitioner company, it cannot be held that first petitioner company was a non banking financial institution. The Court below failed to consider that the power to inspect under Section 45 N of the said Act is only restricted to non banking financial institutions and there is no provision under the Act empowers the complainant to exercise power over the companies, like, the petitioner company, after cancellation of COR issued to it.

10. The learned counsel would further submit that conducting inspection under Section 41 N of the said Act can be done only after issuing a direction under Section 45 K of the Act to produce the book of accounts, and the respondent/complainant cannot make inspection under Section 41 K of the Act, alleging violation of direction issued under Section 45 N of the Act. He also contended that since Reserve Bank of India has no power to conduct inspection or issue directions against the first petitioner company, very basis of issuing directions itself is non-est in the eye of law. Hence, the complaint is not maintainable, and there is no prima facie case made out against the petitioners, and the petitioners are liable to be discharged from the charges.

11. Per contra, Mr.T.Poornam, learned counsel appearing for the respondent/complainant would submit that the first petitioner company is a non banking financial institution under Section 45 I of the Act. Earlier, a Certificate of Registration was issued to the first petitioner company as a non banking financial institution to carry on non banking financial activities, subsequently, the same was cancelled for some violations, with a specific condition that the first petitioner company shall not raise any public deposits and the company should comply with the provisions of Reserve Bank of India Act as applicable to a non banking financial company and also abide by all the directions, guidelines and instructions of Reserve Bank of India. Even though the above order of cancellation was challenged , the order was not stayed by the appellate authority and the appeal is still pending. Hence, the petitioners should comply with all the directions issued by the Reserve Bank of India.

12. Earlier, by an order dated 17.08.2005, a direction was issued under Section 45 K of the Act, directing the petitioners to furnish certain particulars, which were not furnished by the first petitioner company. In the above circumstances, a further notice under Section 45 N of the Act was issued on 12.02.2009 and officers were also deputed for inspecting the Books of Accounts. Thereafter, since they have not complied with the directions, another notice dated 16.02.2009 was issued to the first petitioner company followed by yet another notice dated 03.03.2009 under Section 45 N of the Act, to provide some information for conducting scrutiny of the Books of Accounts of the company. But the first petitioner company did not obey the directions issued by the respondent/complainant and disputed the powers of the Reserve Bank of India to issue such directions. Since the petitioners failed to comply with the directions issued by the respondent/complainant/Reserve Bank of India, a complaint has been filed against the first petitioner company and the Court below, after taking cognizance and considering the evidence and the materials available on records, framed charges against the petitioners.

13. The learned counsel appearing for the respondent would further submit that earlier, the petitioner had filed a petition to quash the criminal case before this Court in CrI.O.P.No.22190 of 2009. Subsequently, the same was dismissed as withdrawn on 28.11.2011. Again, the petitioner had filed another quash petition in CrI.O.P.No.7370/2015 before this Court and in the above quash petition, notice has been ordered to the respondent/complainant and the said CrI.O.P is still pending and pending CrI.O.P, the petitioner had filed present application under Section 245 Cr.P.C. before the Court below and on

dismissal of the same, the present revision has been filed. Hence, there is no bonafide in the petition and the present revision petition filed only in total abuse of process of law, and the revision has been filed only in order to drag on the proceedings, there is no bonafide on the part of the petitioners.

14. I have considered the rival submissions and perused the materials available on records carefully.

15. At the time of framing of charges, the Court has to apply the test of prima facie case, that is, from the material available on record that a prima facie case is made out against the accused to frame the charges. Recently, the Hon'ble Supreme Court of India, in a judgment reported in 2014 11 SCC 709 (State of Tamil Nadu V. N.Suresh Rajan and others) held as follows:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it considers that there is not sufficient ground for proceeding against the accused. However, discharge under 227 can be ordered when the Magistrate considers the charge against the accused to be groundless. The power to discharge is exercisable under Section 245(1) when, the Magistrate considers, fSection 239or reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction.

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay. The same reads as follows: (SCC pp. 755-56, para 43) 43. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of prima facie case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed. " Keeping the above principle in mind, let us proceed to consider the facts of the present case.

16. In the instant case, from the materials available on record, it could be seen that first petitioner company was granted COR to carry on non banking financial activities. Subsequently, the same was cancelled for certain violations. While cancelling the above said COR, certain directions were issued to the first petitioner company. Even though the order was challenged by the petitioners, the order was not stayed till date. Hence, the petitioners are bound to follow the directions issued by the respondent/complainant. Subsequently, the respondent issued a direction under Section 45 K of the Act calling for certain particulars and documents from the company, and when the same was not furnished, a notice under Section 45 N of the Act was also issued for inspection of the Accounts and some officials were also deputed for the same. But the petitioners did not comply with the directions and they have also questioned the power of the respondent/complainant to issue such directions. Since the directions issued by the respondent/complainant was not complied with, the respondent had filed a complaint against the petitioners.

17. So far as the contention of the learned counsel appearing for the petitioner that the petitioner is not a non banking financial company, he is also relying upon various documents to contend that the petitioner will not come within the purview of non banking financial institution, but that issue cannot be considered by the Court at the time of framing charges. It is also well settled position of law that at the time of framing charges, the Court has to consider the material placed by the complainant only and the materials placed by the accused cannot be considered while framing charges. Based on the document placed by the complainant, namely that the petitioner was originally granted with COR to run as non banking financial company, which was subsequently cancelled and at the time of cancellation, certain directions were issued with some conditions, and since the conditions were violated, certain statutory directions were issued, and since the directions were not complied with, the present complaint has been filed. Based on the above materials, the Court below found that a prima facie case has been made against the first petitioner company and framed the charges.

18. In the above circumstances, the contention of the first petitioner company that they have got ample materials to show that the first petitioner company is not a non banking financial institution, cannot be considered at the stage of framing of the charges, it is a matter for trial, and based on the above materials produced by the first petitioner company, the petitioners cannot be discharged.

19. So far as the next contention of the learned counsel for the petitioner that without issuing a direction

under Section 45 K of the Act, the respondent/complainant cannot proceed to inspect the accounts and issue direction under Section 45 N of the Act, this contention also cannot be accepted for the reason that, already a notice under Section 45 K of the Act has been issued for production of records and since the records were not produced as directed by the respondent, a further notice under Section 45 N of the Act was issued for inspection of the Accounts.

20. In the above circumstances, the Court below, after considering the entire materials, came to a conclusion that a prima facie case is made out against the petitioners to frame the charges and dismissed the discharge application filed by the petitioners. I find no irregularity or illegality in the impugned order passed by the Court below. The revision fails and it is liable to be dismissed.

21. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mrp

To

1. The Additional Chief Metropolitan Magistrate, (E.O.I.)
Egmore, Chennai.

2. -do- thro the Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to M/S. T. Poornam, Advocate Sr. 23428

+2cc to Mr. Prakash Goklancy, Advocate Sr. 23145

Pre-delivery Order
in
CrI.R.C.No.409 of 2017

RSI (CO)
VR(27/4/2017)