HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.2056 of 2010

ORDER :

The petitioner/A.1 in C.C.No.198 of 2008 pending on the file of the IV Addl.Chief Metropolitan Magistrate, Nampally filed this Criminal Petition seeking to set aside the dismissal order,dt.03.02.2010 in discharge petition in Crl.M.P.No.5740 of 2009 in the Calander Case supra passed by the learned Magistrate supra.

Herd the learned counsel for the petitioner/A.1 and also the learned Public Prosecutor representing the State for D.S.P.CID Regional in Charge Officer, Visakhapatnam.

There are three crimes vide Cr.Nos.206 of 1996 and 105 of 1998 of Mahankali Police Station, Secunderabad, and Cr.No.308 of 1996 of CCCS, Hyderabad, that were registered for the offences u/sec.120(b), 409 and 420 r/w 34 IPC and Sec.3 to 6 of Prize Chit and Money Circulation Scheme (Banning) Act, 1978. The police after investigation filed common chargesheet that was taken cognizance for the offences by the learned Magistrate in allotting C.C.No.198 of 2008. A perusal of the impugned order of discharge, particularly from paras-8 and13 that there are civil and criminal cases registered against the petitioner and other accused that they induced investors and failed to return the amounts invested by them and cheated them as per the prosecution and it is also the prosecution case that from the three separate complaints, the accused approached High Court by filing Crl.M.P.No.7222 of 2000 and there was a direction of all crimes pertaining to Vijayawada and Tirupati are withdrawn from respective Courts and made over on transfer to IX Metropolitan Magistrate, Hyderabad, and the chargesheet was filed by clubbing the above crimes before the Chief Metropolitan Magistrate-cum-Addl.Judge, City Small Causes Court, Hyderabad and numbered as C.C.98 of 2003 and said case was transferred to the present Court and renumbered as C.C.No.198 of 2008 after 5 years of its pendency. A perusal in all the crimes shows, the allegations are similar and the accused are one and the same and there is no bar to file one chargesheet by clubbing crimes even to accept the contrary contention on its sustainability apart from power of Court u/sec.219Cr.P.C. for clubbing while framing charges. No doubt the chargesheet filed is 7 years after the alleged incident. It is not a case of it is barred by limitation. It is no doubt one of the contentions that some of the accused were already acquitted in similar case in C.C.No.783 of 2000 before V Metropolitan Magistrate, Vijayawada, where they were though convicted against which Crl.A.No.161 of 2002 was preferred and the same was allowed and the accused was acquitted. The prosecution is estopped further pursuing the present case even after acquittal of the accused in Criminal Appeal supra. The chargehsheet is also filed at a belated stage after lapse of 7 years from the date of occurrence and the delay is not explained. The further contention is that a similar case was filed in C.C.No.152 of 2003 before the learned Chief Judicial Magistrate, Pandicheri, against the present accused and others, and in that case their discharge application was allowed on 03.06.2005 referring several proceedings initiated before the High Court, Chennai and appointment of Liquidator and the trial Court has no jurisdiction to entertain the case in view of pending of proceedings before the official liquidator, High Court of Madras.

What the learned Chief Metropolitan Magistrate, observed is a perusal of the Crl.A.No.161 of 2002 of the learned Metropolitan Sessions Judge, setting aside conviction judgment passed by the V Metropolitan Magistrate, Vijayawada shows after transfer of the appeal assailing the conviction and the same was disposed of pursuant to the transfer order of the High Court where there was 4 years delay after registration of the crime and there was no worth investigation to establish the accused was Chairman of M/s G.N.S. Nidhi Limited, and the deposits were collected at his instance however, based on those findings, the petitioner cannot be discharged and that too, outcome of different complaints lodged and merely because, the Pandicheri Court in similar case C.C.No.152 of 2003 discharged the petitioner by referring to the company under liquidation pending before the Madras High Court not even a ground to discharge and dismissed the discharge application. A perusal of the facts show the alleged investments of nearly 5crores from 3756 depositors were prior to 1996 and the complaints filed in September, 1996 covered by Cr.No.206 of 1996 and the crimes were transferred for investigation by CID and the allegation is in spite of the amounts matured, failed to repay and during its pendency there is another private complaint filed by one Khairate that was referred to police investigation covered by Cr.No.105 of 1998 that was also transferred to the CID for investigation along with Cr.No.308 of 1996 from which the common final report filed. The filing of the final report and taking of cognizance is covered by C.C.No.198 of 2008 for the offences of breach of trust and cheating and the chargesheet shows there are 7 accused viz. N.M.Karunakaran, the present quash petitioner, the Chairman and Executive Director of G.N.S. Nidhi Limited, K.Soundarrajan, President of GNS Nidhi Limited, K.Suresh, Director of GNS Nidhi Litd., K.S.Kumar, Director, GNS Nidhi Ltd, K.Manickam, Director, GNS Nidhi ltd, G.Subramani, Director, GNS Nidhi Ltd., and K.Mahesh, Director, GNS Nidhi Ltd.

In fact, it is the GNS Nidhi Limited, the entity that collected the amounts and committed the offence and that entity is not chargesheeted and the cognizance taken is against these individuals of the entity and not the entity made a party much less taken cognizance against the entity and without the entity as accused, its officials cannot be made liable as per the expression of the Apex Court in Narendra Kurangi Vs. Greenmint India Agritech (P) Limited, Hyderabad[1] at para-3.

Having regard to the above, suffice to say apart from the other facts that the prosecution is unsustainable.

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[1] 2016 (1) ALD (Crl.) 177

In the result, the Criminal Petition is allowed by setting aside the order dt.03.02.2010 in Crl.M.P.No.5740 of 2009 and quashing proceedings against the petitioner in C.C.No.198 of 2008 on the file of the Court of the VI Addl.Chief Metropolitan Magistrate, Nampally, Hyderabad. The petitioner/A.1 is acquitted and his bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:13.09.2017
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