**HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO**

**CRIMINAL PETITION No. 13376 OF 2010**

**ORDER** :

The petitioner in the quash petition is the accused No.9 of C.C.No.497 of 2000 on the file of the II Addl.Judl.Magistrate of First Class, Nellore, where the learned Magistrate has taken cognizance for the offences punishable under Sections 406, 420 and 120-B of IPC which is outcome of Cr.No.497 of 2000 of II Town Police Station, Nellore, registered on the report of one doctor T.Narasimha Reddy, dated 13.02.1999, and from the investigation, filed the final report.

The substance of the police final report from the investigation pursuant to the crime registered on the report of said T.N.Reddy is that out of the 9 accused, A.1 to A.7 are the Directors of RBF Nidhi branch at Nellore and A.8 and A.9 are the Deputy Managers respectively, one after other. There is a misappropriation taken place at RBF Nidhi. A.1 to A.7 are dealing with the business of finance by inviting public deposits under various schemes and also lending money with wide publicity as the investors are profit-oriented luring large public to invest and the intention of A.1 to A.7 to defraud the investors opened the Nellore branch on 27.05.1996 and it is on seeing the publicity of A.1 to A.7 including by pamphlets and otherwise advertisements, the L.Ws. 1 to 19 including the defacto-complainant supra as L.W.1, invested the amounts from huge rate of interest offered by the A.1 to A.7 under various schemes collected by the A.8 and A.9, Assistant Branch Managers of A.1 to A.7 and even invested the amounts ripe with maturity of the bonds given by A.1 to A.7 signed by A.8 and A.9, were not returned and the deposits were committed default by A.1 to A.7 is to a tune of Rs.6,23,42,802/-, which they shifted to their head office at Chennai and dispersed to the kith and kin of A.1 to A.7 towards loans contrary to the articles of association of the company and by converting to their own use and the branch office of Nellore was abruptly closed by A.1 to A.7 on 26.11.1999 by shifted to Chennai. Thereby they committed breach of trust and cheating and are liable for punishment under the sections supra so also A.8 and A.9.

In fact, the A.1 to A.6 filed discharge application under Section 239 CrPC, in Crl.M.P.No.1900 of 2009 and the learned IV AJFCM, Nellore FAC II AJFCM, Nellore by order dated 19.12.2009 allowed the same by discharging them from the prosecution set aside the cognizance order. The impugned order reads that earlier A.1 toA.5 and A.9 in 2001 respectively filed discharge applications and they were ended in dismissal to conduct full-fledged trial and later after 9 years, the mater went even upto Division Bench of Madras High Court by several legal proceedings and said Division Bench of Madras High Court after summoning of records of the company including books of accounts, came to conclusion that the A.7 S. Subramanyam, solely responsible for the present state of affairs of the RBF Nidhi private Limited-the entity, for he promoted the benefit fund/Nidhi of the company in the year 1983 under the Companies Act,1956 and it was converted as a non banking financial company under the purview of the Reserve Bank of India Act, as well as companies Act and A.7 is the Chairman and Managing Director of the Company with a main objective of it to receive money under short term deposits including recurring and fixed deposits and saving accounts and to lend moneys and regulated by the articles which contemplated manner in which deposits to be received and to be utilized and A.1 toA.5 were appointed as employee Directors and A.6 was inducted as a Nominee Director of the said company at the instance of the A.7 they were earlier salaried employees and A.1 to A.6 were not assigned any specific duties in respect of the management of the company nor having any authority to grant loans and they have not drawn any remuneration but for salaries but for 5000 shares were issued in their names in inducting them as Directors. As per the chargesheet, A.8 and A.9 are Assistant Managers issued the certificates of Fixed Deposits on behalf of the A.1 to A.7 and thereby mainly A.1 and A.7 and also A.8 and A.9 are responsible for the offences supra.

In fact, there appears nothing impugning said discharge order and now coming to the petitioner-A.9 concerned, he is only one of the Assistant Managers employed by the company represented by its Managing Director-A.7 and the Directors A.1 to A.6 from their advertisement, issued deposit receipts of the investments made by the public even from the very report and chargesheet, there is nothing to show that they lured any public much less any investment of money and other witnesses but for the advertisements lured them of A.1 to A.7 to invest accepting higher interest, they approached the Nellore Branch where invested and obtained deposit receipts that were passed by A.8 and A.9. When such is the case and there is no iota of material including from the statements of witnesses during investigation insofar as A.8 and A.9-the petitioner herein, they lured any investors to invest or they appropriated any amount, they are hardly liable for the criminal prosecution of cheating or breach of trust, thereby the petition is to be allowed quashing the proceedings against the petitioner-A.9.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.497 of 2000 on the file of the II Addl.Judl.Magistrate of First Class, Nellore, against the petitioner/A.9. The petitioner/A.9 is acquitted and his bail bonds shall stand cancelled.

Consequently, pending miscellaneous petitions shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:22.08.2017
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