

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE Nos.291 and 297 of 2017

COMMON JUDGMENT :

The accused persons 1 to 4, 6 and 7 respectively maintained the revisions, particularly, impugning the order in CrI.M.P.No.1025 of 2016 in C.C.No.7 of 2006 and CrI.M.P.No.1026 of 2016 in C.C.No.2 of 2012 passed by the learned Principal Sessions Judge, Nalgonda, under Section 5 of the A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short, 'the Act') when sought for deletion of Section 5 of the Act from the application of the prosecution respectively. The learned Sessions Judge, having so deleted the Section 5 of the Act, transferred the case from its file and delegated to the learned Additional Judicial Magistrate of First Class, Miryalguda for trial of other offences like an ordinary trial Court.

2. The attack is not on deletion of Section 5 of the Act, but the case sent to the learned Magistrate having local jurisdiction to try. It is needless to say, the jurisdiction of the Special Court as a Magistrate to take cognizance arises, once the provisions of the Act applies to the case on hand and not for other offences, when no provision of the Act apply, but for, at best, along with the provisions of the Act to try for other offences also. In fact, the order passed by the learned Principal District Judge by referring to G.O.Ms.No.349 Home (Gen-B) dated 29.10.1999 published in A.P. Gazette No.443 dated 01.11.1999, particularly Rule 5. It is under the impression either by the learned Public Prosecutor or under his statement in consideration by the

learned Principal District Judge that the District Magistrate/District Collector is the competent authority as far as districts are concerned to launch prosecution for the offence under Section 5 of the Act. That is, in fact, a wrong approach in filing the application by the Public Prosecutor and in passing the order by the learned Principal District Judge as said G.O.Ms.No.349 speaks of the appointment by the Government under Section 4 of the Act, the District Magistrate in all Districts and Commissioner of Police for Hyderabad, Visakhapatnam and Vijayawada respectively, has competent jurisdiction to exercise control over the property attached by the Government under Section 3 of the Act and such other powers and discharge functions are prescribed under Section 4(2) of the Act within their respective jurisdictions.

3. Now coming to the Section 4 of the Act, it reads as follows:

“4. Competent Authority :-(1) The Government may, by notification appoint an authority hereinafter called "the competent authority" to exercise control over the properties attached by the Government under Section 3.

(2) The Competent Authority shall have such other powers and discharge such other functions as may be prescribed, in addition to the powers and functions specified under this Act.

(3) Upon receipt of the orders of the Government under Section 3, the Competent Authority shall apply within fifteen days to the Special Court constituted under this Act for making the ad interim order of attachment absolute.

(4) An application under sub-section (3) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the financial establishment has committed any default or is likely to defraud, is founded, the amount of money or value of other property believed to have been procured by means of the deposits, and the details, if any, of persons in whose names such property is believed to have been invested or purchased out of the deposits or any other property attached under Section 3.”

4. Sub-sections 1 and 2 of Section 4 of the Act referred in the G.O. only deals with exercise control over the properties attached by the Government. Under Section 3 of the Act, such other powers and discharge other functions as may be prescribed. It is not prescribed neither in Section 4 nor in G.O.Ms.No.349 supra, entrusting any power on the Commissioner of Police of three metropolitan areas or to the District Magistrates in other areas to accord sanction for prosecution or permission for prosecution. Once such is the case, for grievance of any victim or the *de facto* complainant when reported to the police to register the crime and to investigate and to file final report including for the offence under Section 5 of the Act; Once such a permission is not required, the memo of the Public Prosecutor to delete Section 5 saying permission of the District Magistrate not obtained by the police or passing the order by the Principal District Judge there from is *per se* unsustainable.

5. In this background, coming to the impugned order of the learned Principal District Judge to the extent of make over the case to

the Additional Judicial Magistrate of First Class, Miryagluda, is concerned, once the Special Act provisions have no application, the Principal District Judge is right that also being the District Judge apart from the power of transfer. However, that is not the issue and in view of the observations, once the High Court got the power from its constitution under Section 482 of the Cr.P.C. either to prevent abuse of process of any Court or to sub-serve the ends of justice, apart from other power under Section 483 Cr.P.C. of the continuous supervision over the Courts of Judicial Magistrates as to ensure that there is an expeditious and proper disposal of the cases by such Magistrates and the provisions of the Act saying the Principal District Judge got the power of Magistrate, thereby, once the order passed is unsustainable. This Court cannot keep quite by closing its eyes, but for, to prevent abuse of process of Court. Therefore and in the result, the impugned order is set aside by restoring Section 5 of the Act pursuant to the cognizance already taken and the learned District and Sessions Judge-cum-Special Judge, Nalgonda, by directing to call back the record to its file and proceed in accordance with law from the jurisdiction conferred to decide the case on own merits by conducting trial.

6. With the above direction, both the Revisions are disposed of.

7. Miscellaneous petitions pending, if any, in both the Revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

15th March 2017
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