HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2630 of 2014

ORDER:

The revision petitioner is the 4th accused in C.C.No.2 of 2008 on the file of Principal Sessions Judge, Khammam. The petitioner is shown as one of the Directors of Jeeban Bikash General Finance and Investment Company (I) Limited. It is on the report of one M.Reddipathulu of Manuguru one of the so called victims of the deposits collected by the entity of the accused persons and failed to pay, with the claim of they were cheated, the police SHO, Manuguru registered crime No.93 of 2000 under Section 420 IPC and Section 5 of A.P. Protection of Depositors Financial Establishment Act, 1999 (for short 'the Act'). The police after investigation filed charge sheet against 6 accused viz., A.1-Madhan Mohan Mahathi, the Managing Director of the entity supra, A.2-Rabindar Kumar Mahanthi, Director of the entity supra, A.3-Sushantha Das, Director of the entity supra, A.4-Gurudas Benarjee, Director of the entity, A.5-B.Manjudhar, Branch Manager of the entity supra and A.6-Vedagiri Anjaneyulu, Retired Signal Inspector in Railway Department, by showing but for A.6 others are absconding.

2. The learned Principal Sessions Judge taken cognizance of the offences against the accused and issued NBWs against them in C.C.No.2 of 2008. It is pursuant thereto and from their submission to the custody of the Court with enlargement on bail if any and in the course of hearing before charges, the petitioner/A.4 filed application for discharge under Section 239 Cr.P.C. with averments in the petition though he was originally

one of the Directors of the entity started in February 1994 and due to his personal problems, he addressed a letter to the Board of Directors of the entity expressing his inability to continue as Director and they accepted the same and the same was sent by Registered post with acknowledgment due on 30.11.1998 and the same was accepted by said MD of the entity supra and accordingly Form No.32 was also filed before the Registrar of Companies, which was registered on 30.11.1998. The resignation of the petitioner/A.4 is acknowledged and thus, petitioner/A.4 is no way concern with the administration and business transactions of the entity and hence, the petitioner/A.4 cannot be prosecuted and he is liable to be discharged. After hearing both sides pursuant to the averments, the discharge petition was dismissed vide order dated 04.12.2014 by the learned Sessions Judge saying once he was one of the Directors from the inception of the entity floated in February 1994 and collected amounts, his subsequent resignation will not absolve from liability.

3. Now coming to the correctness of the said impugned order of the learned Sessions Judge dated 04.12.2014, no doubt a mere Director of an entity in the absence of showing concern with the day to day affairs not liable for prosecution for there is no vicarious liability unless specifically provided by the legal fiction or otherwise for the acts attributed. The impugned order of the lower Court from the submissions of the learned Public Prosecutor in tune to it is once observes that undisputedly he is one of the Directors and collected amounts from the depositors of the entity and what Section 5 of the Act says is any amount collected as deposit, if on the due date failed to pay, the person is

liable for prosecution. Once such is the case, it is to be considered when the deposits were collected and when it was fallen due and when he resigned, whether it is after fallen due or even prior to that. These are the matters required to be considered in full dressed trial and that too for no investigation material even filed in this case to consider from the statements of as many as 15 witnesses i.e., respective policy holders who paid the amounts and whose amounts committed default by non-payment even after fallen due. Thus, it is difficult for this Court while sitting revision within the limited scope to interfere from mere showing of the resignation as Director with effect from 30.11.1998.

4. When once the trial Court from the material though not discussed in so many words not chosen to discharge the accused by sitting against to reverse the same. Non-giving of the reasons in the cognizance order *per se* not a sole ground in the absence of saying of there no is material even to give any reasons to substantiate the accusation. The expression of the Apex Court in **S.W.Palanitkar Vs. State of Bihar**[1] of the ingredients required to constitute cheating from the inception with fraudulent or dishonest intention to exist in causing wrongful loss and in having wrongful gain without which mere failure to promise subsequently cannot presume act of cheating not in dispute, but for how far the principle can be applied to the facts. Even coming to the expression in **M/s. Thermax Limited & Others Vs. K.M. Johny & Others**[2] relied on the same principle laid down in

[1] (2002) 1 SCC 241
[2] (2011) 13 SCC 412

S.W.Palanitkar supra reiterated the said proposition. In fact even coming to Section 5 of the Act, non-payment of the amount due of the deposit amount or policy amount collected as the case may be itself constitute an offence irrespective of the intention.

5. Having regard to the above and in the result, without prejudice to the contest by left open all available defence, the criminal revision case is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 20.04.2017
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