IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.Nos.1198, 1199 & 1200 of 2014
& M.P.Nos. 1 and 2 of 2014 (03 Nos)

Salim pasha ... Petitioner in Crl.RC.No.1198 of 2014

Elias Sait ... Petitioner in Crl.RC.No.1199 of 2014

Altaf Pasha ... Petitioner in Crl.RC.No.1200 of 2014

Vs.

Deputy Superintendent of Police
Economic Offence Wing II
Chennai - 600 040. ... Respondent in all Crl.RC's.

PRAYER IN CRL.RC.NO.1198 OF 2014 : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the order in Crl.RC.No.25 of 2011 dated 05.09.2014 passed by the II Additional Sessions Judge, Chennai reversing the order passed in Crl.MP.No.942 of 2004 in C.C.No.12027 of 2003 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

PRAYER IN CRL.RC.NO.1199 OF 2014 : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the order in Crl.RC.No.23 of 2011 dated 05.09.2014 passed by the II Additional Sessions Judge, Chennai reversing the order passed in Crl.MP.No.940 of 2004 in C.C.No.12027 of 2003 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

PRAYER IN CRL.RC.NO.1200 OF 2014 : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the order in Crl.RC.No.24 of 2011 dated 05.09.2014 passed by the II Additional Sessions Judge, Chennai reversing the order passed in Crl.MP.No.941 of 2004 in C.C.No.12027 of 2003 by the learned Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioner in all Crl.RC's. :Mr.K.S.Dhinakaran, Senior Counsel for Mr.Zaffarullah Khan

For Respondent in all Crl.RC's. :Mr.R.Ravichandran Government Advocate(Criminal Side)

COMMON ORDER

The present Criminal Revision cases have been filed to set aside the common order passed in Cr.RC.No.25, 23 and 24 of 2011 in Cr.lM.P.Nos.942, 940 & 941 of 2004 in C.C.No.12027 of 2003 dated 05.09.2014 passed by the learned II Additional Sessions Judge, Chennai.

2. The main allegations made by the prosecution is that the defacto complaint gave a complaint, stating that he had deposited a sum of Rs.16,100/- and Rs.16,200/- in RBF Benefit Fund Ltd., T.Nagar on 08.06.1999 and even after the maturity, the amounts were not refunded, and in such circumstances, he had requested to investigate and proceed against the person responsible for repayment of his deposit. Based on his complaint a case was registered in Cr.No.1066 of 1999 under Section 409 r/w 34 IPC and after investigation, FIR was filed against all these petitioners along with four other accused alleging that they are liable to be punished for the offence under Sections 409 r/w 34 IPC and the same was taken on the file of the Chief Metropolitan Magistrate, Egmore, Chennai, in C.C.No.12027 of 2003.

3. During the pendency of the case in C.C.No.12027 of 2003, the revision petitioners and other two accused filed Crl.MP.Nos.940, 941 & 942 of 2004 to discharge them from the alleged offences.

4. The learned Chief Metropolitan Magistrate, Egmore, Chennai, perused the entire averments in the complaint as well as the statement recorded by the Investigating Officer as well as the final report and allowed the Crl.M.P.Nos.940, 941 & 942 of 2004 dated 10.11.2008 on the ground that the petitioners are only the borrowers from RBF Benefit Fund Ltd., T.Nagar, and as they have no privity of contract with the defacto complainant, even the entire averments are accepted as true, no offence as alleged by the defacto complainant is made out as against these petitioners/accused. Therefore proceeding with the trial as against these petitioners will be an abuse of process of law as there is a remote possibility of conviction and in this view of the above, the learned Chief Metropolitan Magistrate, Egmore, Chennai, discharged the petitioners from the C.C.No.12027 of 2003.

5. Aggrieved against the order of the learned Chief Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.Nos.940, 941 & 942 of 2004 dated 10.11.2008 the respondent herein preferred the Criminal Revision Case before the II Additional Sessions Judge, Chennai, in Crl.R.C.Nos.23, 24, 25 of 2011.

6. After giving due opportunity to both sides, the learned II Additional Sessions Judge, Chennai, allowed the Criminal Revision Case and directed the petitioners herein and other four accused to appear before the trial Court.

7. Against the order of the learned II Additional Sessions Judge, Chennai, in Crl.R.C.Nos.23, 24, 25 of 2011 dated 05.09.2014, the revision petitioners herein have preferred the present Criminal Revisions.

8. The case of the prosecution is that RBF Benefit Fund Ltd., started in the year 1983 with the object of enabling the members to save money to invest their savings and secure loans on favourable rates of interest. The Nidhi Company inculcates the habit of thrift and savings among the poor and middle class people. The amounts are advanced only to individual members against securities and other prescribed items. The shares of the company are not offered to the public but allotted to those who desire to take advantage of the benefits offered for depositing or borrowing money. The procedure is that the application for admission as a shareholder of the company shall be made in the form prescribed, accompanied by the amount payable in respect of the shares applied for together with necessary stamp fee to be affixed on share certificate as a shareholder of the company until his application has been accepted by the directors. In case an application is accepted, a share certificate will be issued. Accordingly, the RBF Benefit Fund Ltd., T.Nagar, was able to mobilize more than 400 crores of public deposits approximately from 1,92,000 depositors. C.C.No.12027 of 2003 has been filed in respect of misappropriation of fund of RBF Benefit Fund Ltd., T.Nagar, to the tune of Rs.19 Crores for the period from 28.11.1994 to 19.06.1996.

9. The learned counsel for the revision petitioners mainly contended that the revision petitioners have not involved in any transactions except the borrowing. Failure to repay the amount cannot be treated as an offence under Section 409 IPC. The relationship between the depositors and the Company and the relationship between the Company and its borrowers are different and because of the failure to repay the amount by the borrowers, the borrowers cannot be treated on par with the Company as if they had also committed the offence. In further, the respondent herein has not included the Company as a party and also against the borrowers of the Company, criminal proceedings is not

maintainable. By virtue of the Judgment of this Court in W.A.No.2474 of 2003 and other connected writ appeals dated 20.02.2004, the action initiated by the respondent department was ill-conceived. The Hon'ble Supremen Court also confirmed the Judgment of the Division Bench of this Court in W.A.No.2474 of 2003 in SLP (C) 6585 of 2004 dated 25.07.2011. Further, the learned counsel for the petitioners placed reliance on the following Judgments :

" (i) (2005) 4 Supreme Court Cases 530, Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others.

(ii) (2011) 1 Supreme Court Cases 74, Iridium India Telecom Limited Vs. Motorola Incorporated and Others.

(iii) (2015) 12 Supreme Court Cases 781, Sharad Kumar Sanghi Vs. Sangita Rane.

Further the learned II Additional Sessions Judge, Chennai, failed to consider the above mentioned Judgments supra and dismissed the Criminal Revision Cases in Crl.R.C.Nos.23, 24, 25 of 2011 dated 05.09.2014, which warrants interference of this Court.

10. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that there are materials available to proceed further in the case. Since the learned II Additional Sessions Judge, Chennai, has rightly considered the real implications in this case and dismissed the Crl.R.C.Nos.23, 24, 25 of 2011 dated 05.09.2014. The case which is legally sustainable and the order of the learned II Additional Sessions Judge has to be confirmed.

11. Heard the rival submissions made on either side and perused the materials available on record.

12. When the matter was taken up for hearing on 04.09.2018, none of the counsels produced the documents filed by the prosecution under Section 173 of Cr.P.C. Therefore, the matter was posted today, after getting records from the trial Court. On a perusal of the records, it reveals that there is a prima facie allegations has been made against the revision petitioners. While considering the petition for discharge of the petitioners under Section 239 Cr.P.C, the trial Court has to see the documents produced by the prosecution under Section 173 Cr.P.C and not the defence taken by the accused. The probative value of the evidence need not be gone into. Whether the conspiracy has taken place can be decided only after the trial and not at this stage as already stated by the learned II Additional Sessions Judge, Chennai, in Crl.R.C.Nos.23, 24, 25 of 2011 dated 05.09.2014. Therefore, under these circumstances this Court does not find any incriminating materials in this case. Hence, there is no merit in the case.

13. Accordingly the Criminal Revision Cases are dismissed and the order passed by the learned II Additional Sessions Judge, Chennai, in Crl.R.C.Nos.23, 24, 25 of 2011 dated 05.09.2014 is hereby confirmed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To
1. The II Additional Sessions Judge
Chennai.

2. The Chief Metropolitan Magistrate
Egmore, Chennai.

3. The Deputy Superintendent of Police
Economic Offence Wing II
Chennai - 600 040.

4. The Public Prosecutor
Madras High Court.

+3 Ccs to Mr.Zaffarullah Khan, Advocate sr 62071.

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& M.P.Nos. 1 and 2 of 2014 (03 Nos)

SP(19/03/2019)