HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.394 of 2018

ORDER:

Heard the counsel for the petitioners as well as the learned Public Prosecutor for the respondent-State.

The present criminal revision case is filed against the orders dated 16.11.2017 passed in C.C.No. 2 of 2011 on the file of the Court of the Metropolitan Sessions Judge-cum-I Addl. District and Sessions Judge, Visakhapatnam to the extent of framing charge No.3 (last charge) under Sections 3 and 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999 (for short, "the Act,1999").

The brief facts of the case are that M/s. Techway Communications Private Limited i.e. A-1 is a Corporate Entity registered under the Companies Act, 1986. A-2, A-3, A-5 and A-12 are the residents of Hyderabad, A-4, A-7, A-10, A-11 are residents of Rajahmundry, East Godavari District, A-8 is resident of Kovvur, East Godavari District and A-2 is the Chairman and Managing Director of A-1 Company. A-4, A-7 and A-8 are the Directors, A-9 is the Director (Recruitment), A-10 is the Director (Operations), A-11 is a Director (Technical) and A-12 is Ex-Director of the A-1 Company. All the accused are close associates. A-2 who studied Computer Science Engineering, developed a technological process which will converge the three signals i.e. telephone, internet and cable TV into one signal which can be transmitted through single cable. To implement the same, he incorporated a Company under the name and style of Techway Communication Private Limited and registered it with the Registrar of Companies, Hyderabad on 22.03.2005. For the purpose of development of the business of the Company, the other accused have been taken as directors and other various posts. In pursuance of the same, the accused gave wide publicity in press and media with a false promise for providing jobs by paying Rs.7500/- per month during the training period. Because of the said publicity and inducement made by paper advertisements, as many as 580 of Software Engineers of Visakhapatnam and other districts including LWs.1 to 396 approached the management and they were recruited by the Company as Level-4 Trainee Engineers. Subsequently, A-1 toA-12 collected an amount of Rs.65,000/- towards security from each candidate by way of demand draft by promising that the amount of Rs.50,000/- will be refunded to the candidates after one year if the employee wishes to leave the Company etc. Initially the accused have paid salaries to the training staff for two months as promised by them. Subsequently, they failed to give salaries to the employees. Sensing the foul play LWs.1 to 396 and others started demanding to refund their amounts whereupon the accused closed the institute and fled away. In fact, A-1 to A-12 have issued refund receipts for Rs.50,000/- but failed to refund the amount as promised and did not give any receipt for the remaining cash of Rs.15,000/- to the candidates. In that connection, a complaint was lodged and it was registered as Crime No.323 of 2007 under Sections 420 and 120-B IPC of II Town Police Station, Visakhapatnam. After investigation, the charge sheet was laid for the offences under Sections 120-B, 420 r/w 34 IPC and Sections 3 and 5 of "the Act, 1999" against A-1 to A-12. The learned Metropolitan Sessions Judge-cum-I Addl. District and Sessions Judge, Visakhapatnam-cum-Special Judge for A.P. Protection of Depositors and Financial Establishments Act, 1999, Visakhapatnam, after perusing the charge sheet and the material enclosed thereto, framed charges by taking cognizance of Sections 3 and 5 of 'the Act,1999" along with other offences by orders dated 16.11.2017. Questioning the said orders, to the extent of taking cognizance under Sections 3 and 5 of "the Act, 1999", the present criminal revision case is filed.

Learned counsel appearing for the petitioners who are A-1 to A-7 and A-10 to A-12 contended that the petitioners are innocent for the charges levelled against them and they are falsely implicated. The allegations made in the charge sheet will not attract any prima facie case to constitute an offence under Sections 3 and 5 of "the Act,1999" against the petitioners. In fact, there is no material either in the charge sheet or in the documents enclosed thereto by the prosecution to show that the petitioners are running any business by accepting any deposits and agreeing for returning the same with interest. In fact, the selected candidates on their own volition as per the terms and conditions paid the security deposit amount and as such, it will not come within the purview of "the Act, 1999". Basing on the provisions of Sections 3 and 5 of "the Act,1999", the learned counsel submitted that the first petitioner Company will not come within the meaning of financial establishments as defined under Section 2(c) of Act 17 of 1999. Therefore, he sought to set aside the order to the extent of taking the cognizance under Sections 3 and 5 of "the Act,1999".

Per contra, the learned Public Prosecutor appearing for the respondent-State would submit that the present revision case as filed, is not maintainable. Under Section 2 ( c ) of "the Act,1999" only the government company registered under the Companies Act, 1956 (Central Act 1 of 1956) or a Corporation or a Co-operative Society owned and controlled by any State Government, or the Central Government, or a Banking Company as defined under Section 5 (c) of the Banking Regulation Act, 1949 (Central Act 10 of 1949) or a non-Banking Financial Company as defined in Clause (f) of Section 45 (1) of the Reserve Bank of India Act, 1934 (Central Act II of 1934) alone are exempted, but not the Accused No.1-Company. He also brought to the notice of the Court that the accused have collected huge amounts from about 580 Software Engineers and the said amounts were not refunded to them. In these circumstances, he submitted that there is no irregularity or illegality in taking cognizance of the offence under Sections 3 and 5 of "the Act, 1999" against the petitioners.

Having heard both the learned counsel and on perusal of the material on record, it is revealed that the petitioners under the guise of providing employment, gave wide publicity in press and media and collected huge amounts to a tune of Rs.1,97,00,000/- from the prospective candidates. In fact, from the perusal of the charge sheet, it is also crystal clear that they have collected Rs.65,000/- from each candidate, but they gave refund receipts for Rs.50,000/- but failed to give receipt for the remaining Rs.15,000/- to the candidates. Though the accused promised to pay salary, they have paid salary only for two months and thereafter, they absolutely failed to give salaries to the employees and thereafter closed the institute and fled away. The acts of omissions and commissions on the part of the petitioners would come within the purview of Sections 3 and 5 of "the Act, 1999". As far as Section 2 (c) of "the Act, 1999" is concerned, the petitioners' company, is not exempted and the same is not applicable to the first petitioner-Company. In these circumstances, this Court is of the opinion that there is no irregularity or illegality in the order passed by the Court below in taking cognizance for the offences under Sections 3 and 5 of "the Act, 1999" against the petitioners. Hence, this Court is of the opinion that there are no merits in the revision and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed. Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date:26.06.2018.
CCM

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.394 of 2018

Date:26.06.2018

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