SMT. JUSTICE T.RAJANI

Criminal Appeal No.1766 of 2009

JUDGMENT:

This appeal is preferred against the judgment dated 13.06.2008 passed in C.C. No.16 of 2005, on the file of the Special Court under Andhra Pradesh Protection of Depositors of Financial Establishments Act, Hyderabad, (Metropolitan Sessions Judge), by virtue of which, the Court below acquitted the accused for the offence under Sections 406, 420 IPC and Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act (for short "the Act").

The facts of the case, in brief, are that A2 floated A1 company with board of directors and procured deposits and bank guarantees from certain persons for recruiting them as Pilots and Captains, promising to send them for training abroad on beech 1900 D Aircraft and to pay retainer salary ranging from Rs.10,000/- to Rs.20,000/- per month and that neither the accused sent them for training nor paid their retainer salary, nor returned the collected deposits to the tune of Rs.45,00,000/-, but tried to encash bank guarantees and that A2 was the Chairman, and A3 and A4 were board of directors.

The case was taken on file for the offence under Sections 420, 406 IPC and Section 5 of the Act against A1 to A3 only. On appearance of the accused before the Court below, after complying with all the legal formalities, the Court framed accusation against the accused for the offence under Sections 420, 406 IPC and Section 5 of the Act, which were denied by the accused and trial was claimed. During trial, on behalf of the Prosecution, P.Ws.1 to 10 were examined and Exs.P1 to P31 and Material Objects M.Os.1 to 26 were marked. On behalf of the defence, D.Ws.1 and 2 were examined and Exs.D1 to D6 were marked.

The Court below, after considering the evidence on record, passed the impugned judgment, against which the present appeal has been preferred on the grounds, that the Court below ought to have seen the ingredients to constitute offences punishable under Section 406 and 420 IPC and Section 5 of the Act, have been made out against the accused; the Court below failed to observe that the accused persons are responsible for the affairs of financial establishments of the company as they are the directors of the company; the Court below ought to have seen that the default in making the repayment of the deposit is sufficient to convict the accused as per Section 5 of the Act.

Heard the learned Public Prosecutor appearing for the appellant and the learned counsel for the respondents.

The Court below has rightly observed that though the accused were charged under Sections 406, 420 IPC and Section 5 of the Act, absolutely no material was brought forth to say that A1 to A3 collected any deposit as defined under Section 2(b) of the Act and committed default as contemplated under Section 5 of the Act and committed the offences of cheating and criminal misappropriation or criminal breach of trust, which they were charged for. Merely because the security deposits were not returned to the persons from whom they collected, it cannot be said that the accused have committed any criminal breach of trust. Hence, the finding of the Court below, with regard to the offence under Section 406 IPC needs no interference. The prosecution absolutely failed in proving that the accused had any intention to cheat the complainant, from the inception, which is a pre requisite for cheating. The evidence of P.W.9 shows that at the time of the interview he was shown licence of A1 Company. Ex.D2, which was marked during the cross-examination of P.W.10, is to the effect that by June, 2003, the Operation Department was brought up to a stage where it was ready for inspection of representatives of DGA (Director General of Civil Aviation). From the above it is clear that A1 Company obtained licence for starting its activities and also made all arrangements for inspection by the representatives of DGCA, in order to obtain permit for commencing of airline operations. The same reveals the *bona fides* of A1 Company. The subsequent failure can only be assumed as being due to the reasons, which are beyond the control of the A1 Company. The evidence also shows that A2 ceased to be a board of director of A1 Company with effect from 03.11.2003. Hence, the charges against him cannot be sustained. Evidence is also clear that A2 and A3 left the Company and G.kiran Kumar Reddy took over the affairs of the Company. However, due to the findings rendered above, that *bona fides* are found on the part of A1 Company, with regard to the starting of the company and re-agreement of the operation staff, it can be held that no offence under Sections 420 or 406 IPC was made out.

The finding of the Court below, with regard to the Section 5 of the Act, also does not need any interference, as any amount collected by the Company by way of security deposit does not fall within the meaning of deposit as per Section 2 (b)(v) of the Act. The evidence, in this case, is only to the effect that the amounts collected are as security deposit. Hence, in view of the above findings, this Court opines that there is no need to interfere with the judgment of the Court below.

In the result, the appeal is dismissed. Consequently, miscellaneous applications, if any pending, shall stand closed.

JUSTICE T. RAJANI

Date: 05.10.2018
LSK