

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4363 OF 2018

ORDER:

This Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') challenging the order dated 08.01.2018 in CrI.M.P.No.3658 of 2017 passed by the Metropolitan Sessions Judge, Visakhapatnam, which was filed under Section 3 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (for short 'the Act') with a request to direct the complainant to attach the property covered by registered sale deeds dated 11.03.2002 and to dispose of the same and to pay the amount, if any, to the *de facto* complainants; alleging that the petitioners came to know that the property sought to be attached was not shown in the list of property attached by the Government, which is valuable property and taken them forcibly. The amount due to the complainant is about one crore only, whereas the property sought to be attached is more worthy than the amount to be paid to the complainant and sought for attachment of the property. The trial court dismissed the petition assigning its own reasons mainly on the ground that the owner of the property is Singampalli Satyanarayana and Bapinidu and they are not the accused in this case and their property cannot be attached.

Aggrieved by the order, the present petition is filed mainly on the ground that they were partners during the period of collection of deposits and they were retired just before the commission of the offence and these properties were acquired in the name of Singampalli Satyanarayana and Bapinidu and the properties are

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liable to be attached to realize the debts due to the depositors, but the trial court came to the conclusion wrongly that the property sought to be attached is not in the name of the petitioners, but registered in the name of Singampalli Satyanarayana and Bapineedu, who are not the accused in the case and it is a serious error, which warrants interference of this Court and sought to quash the order directing the Government to attach the property, exercising power under Section 3 of the Act.

During hearing, Sri G.L.Nageswara Rao, learned counsel for the petitioners reiterated the above contention at the stage of admission. Admittedly, the petitioners are A.1 and A.2 in C.C.No.3 of 2003 pending on the file of Metropolitan Sessions Judge at Visakhapatnam and they allegedly committed the offence punishable under Section 5 of the Act and now they sought for attachment of the property under Section 3 of the Act.

Admittedly, the property was registered on the name of Singampalli Satyanarayana and Bapineedu and they are owners of the property as per the admissions made by the petitioners. Section 3 of the Act deals with powers of the Government to attach the property of the person who committed default for payment of the amount to the depositors. Even according to this Section, if the Government is satisfied that such financial establishment is not likely to return the deposits in cash or kind after maturity, or in any manner agreed upon, the Government may, in order to protect the interests of the depositors of such financial establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of

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the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment, or the promoter, manager or member of the said financial establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority.

Thus, power under Section 3 of the Act can be exercised only by the Government to attach the property of the defaulters or any other person which is inclusive of third party on the basis of the allegation if there is any material that the financial establishment procured the property either in the name of third party or the financial establishment itself.

But, in the present case, the petitioners are the alleged defaulters and Singampalli Satyanarayana and Bapineedu are the third parties to the proceedings. No doubt the property of third party can also be attached by exercising power under Section 3 of the Act, subject to recording satisfaction that this financial establishment acquired these properties in the name of third parties i.e. Singampalli Satyanarayana and Bapineedu, but in the petition, nothing was averred that the property was acquired in their name, but alleged that the document was forcibly obtained in the name of Singampalli Satyanarayana in the year 2002 and it appears that this contention is raised for the first time i.e., almost after 16 years from the date of execution or obtaining document by

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the said Satyanarayana. Even otherwise this court cannot direct the State Government to attach the particular property, but such power can be exercised only by the State Government under Section 3 of the Act. Therefore, this Court is incompetent to issue such direction under Section 3 of the Act.

When the petitioners/ A.1 and A.2 in C.C. No.3 of 2003 is pending on the file of Metropolitan Sessions Judge, Visakhapatnam, filed a petition for attachment of the property of Satyanarayana and Bapineedu, they must be arrayed as parties to this petition and in their absence, no order directing the complainant to attach the property can be passed by the Court and admittedly the said Satyanarayana and Bapineedu were not the accused in the above Calendar Case.

Therefore, I find no illegality in the order passed by the Metropolitan Sessions Judge, and hence the order passed by the court below free from any illegality warranting interference of this Court.

In the result, the criminal petition is dismissed. However, it is for the Government to pass appropriate order subject to satisfaction that this property was procured in the name of Satyanarayana and Bapineedu by the financial establishment as required under Section 3 of the Act.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 04.06.2018
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