HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No. 6730 OF 2011

ORDER:

1. This Criminal Petition under Section 482 Cr.P.C. is filed to quash the proceedings in C.C.No.109 of 1996 pending adjudication on the file of learned VI Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2. It is the case of the petitioner/Accused No.10 that Accused Nos. 2 and 3 conspired together and made to believe that A.1 Company was taken over by Accused No.5 Company and further that A.5 did not take the charge to discharge the liabilities of A.1. There is no specific allegation made against the petitioner/A.10 disclosing the complicity in the commission of offence in collection of deposits from the second respondent and others. Even assuming without admitting that the petitioner is a Director of A.5 company, he did not participate in the day-to-day affairs of Accused No.5 company and there is no allegation against the petitioner disclosing his involvement in the offence. As such, the proceedings insofar as the petitioner is concerned are liable to be quashed.

3. On the other hand, learned Assistant Public Prosecutor submits that the petitioner is one of the directors of the company who gave publication in the news papers inviting general public for depositing in various categories of fixed deposits, pursuant to which, the second respondent herein is one such

depositor and hence there is sufficient material to prosecute the petitioner and sought for dismissal of the Criminal Petition.

4. A perusal of the record shows that basing on the complaint of the second respondent, the police registered the case in Crime No. 32 of 1989 for the offences punishable under Sections 120-B, 420, 406 IPC read with Section 45-S of the RBI Act. After the investigation, the police filed charge sheet against the petitioner and 10 others. There is specific allegation that during the year 1982, B. Rajagopal (A.2) and K.V.Sashidhar (A.3) conspired together with a view to make fortune by luring guilible public to deposit by promising attractive rates of interest and thereby defrauded them. A.2 and A.3 floated a firm in the name and style of 'Dhanalakshmi Consolidates and Industrial Investments' (A.1) and got registeredit vide No. 801/1982 with the Registrar of Firms, Madras. It was also clearly asserted in the charge sheet that in pursuance of the conspiracy, the A.1 firm invited fixed deposits, cumulative deposits, deposits under Dhanalskhmi Lakhier deposit scheme and special deposit schemes. The firm's accounts were audited for the period ending 30.06.1983 by M/s. Alexander and Paul, Madras and the balance sheet for that period disclosed a loss of Rs.3,54,233/-. When the Madras High Court ordered restraint on the A.1 firm from collecting further deposits, A.2 and A.3 in furtherance of criminal conspiracy to collect further deposits, for their personal use managed to float a company in the name and style of

Dhanalakshmi Funds (India) Limited while A.5 making the employees of their concerns as directors who acted as per their directions. Further it disclosed that there was no agreement between A.1 and A.5 regarding take over and consideration thereof. The A.5 company actually did not take over the A.1 firm. A newspaper advertisement in News Today dt. 13.2.1986 was published by the DFIL to the effect that A.5 took over A.1 with effect from 7.12.1985 as per the Form V furnished by the Registrar of Companies. Accordingly there is specific allegation that A.2 and A.3 conspired together and got minutes book in the purported resolutions dated 31.8.1985 , 7.12.1985 and in another minutes book, the purported resolution dated 7.9.1985, thus creating on A.5 a charge to discharge the liabilities of A.1 and such take over was not included in the Memorandum of Association of the Company, A.5 as registered with the Registrar of Companies, Madras.

4. To avoid the legal complications, simple resolution was got recorded in the minutes of the Company A.5 and paper publication of take over of A.1 by A.5 was made without actual take over. Even in the petition, the petitioner/A.10 is not completely denying that he is not the director. There is specific allegation against the petitioner that the petitioner along with others who are Directors of DFIL intentionally induced the complainant and others to deliver their moneys of Rs.66,000/- towards deposits after 7.12.1985 and renewed their deposits after 7.12.1985 the date of dissolution of A.1 firm and did not pay the

principal amount. Accordingly a charge sheet was filed against the petitioner and 10 others.

5. For the foregoing discussion, I am of the considered opinion that there is specific overt act attributed to the petitioner as one of the directors of the company A.5 and deceived the complainant and others by way of inducing them to make fixed deposits in furtherance of common intention of conspiracy. Accordingly there is prima facie material against the petitioner to prosecute him. There is nothing to suggest that the second respondent abused the process of Court and caused prejudice to the petitioner. In that view of the matter, the Criminal Petition is liable to be dismissed.

6. Accordingly the Criminal Petition is dismissed.

7. Miscellaneous petitions pending consideration if any in the Criminal Petition shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 1ST FEBRUARY, 2018.
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