THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No. 1060 OF 2006

JUDGMENT:

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 25.07.2006, passed by the learned Court of Session, Metropolitan Division, Vijayawada (for brevity, 'the trial Court'), in Calendar Case No.2 of 2006, whereby the trial Court convicted the appellant-A.1 under Section 248(ii) Cr.P.C. for the offence under Section 5 of the A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short, 'the Act of 1999') and sentenced him to undergo rigorous imprisonment for Five Years and to pay fine of Rs.50,000/-, in default, to undergo simple imprisonment for two years.

2. Heard Sri Anguru Narayana Rao, learned counsel for the appellant-A.1 and the learned Additional Public Prosecutor appearing for the State, apart from perusing the material available on record.

3. The case of the prosecution, in brief, is as follows:

M/s. V.N.K. Chits and Finance (P) Limited is a registered company under the Companies Act, 1956. The appellant-accused No.1 is the Managing Director and Accused Nos.2 to 9 are the Directors of the Company. P.W.1-Vadde Venkataratnam, L.W.2-Vadde Ganga Bhavani, P.W.2-Veeramachaneni Jayaprada, P.W.3-Medaka Naga Durga

Prasunamba and P.W.4-Velagapudi Kasturi are the depositors who deposited their amounts with the accused. Believing the representations and false promise of the accused, i.e., attractive rates of interest and short time of maturity, they deposited amounts of Rs.1,00,000/-, Rs.1,00,000/-, Rs.4,35,000/-, Rs.1,15,000/- and Rs.50,000/- respectively. P.W.5-Sk. Ahmad and L.W.7-Tadikonda Ajay Kumar are the employees of the company. The accused received deposits till July, 2001. Due to the negligence, mismanagement of the company and fraud played by the accused, huge loss caused to the company resulting loss to the innocent depositors. Thus, the accused cheated the depositors by closing the business and absconding away. On a report by P.W.1-Vadde Venkataratnam, a case was registered by P.W.6-Sub Inspector of Police, L&O, Patamata Police Station, in Crime No.558 of 2001. After completion of investigation, P.W.6-Sub Inspector of Police filed charge sheet for the offences punishable under Section 420 I.P.C. and Section 5 of the Act of 1999, before the trial Court against A.1 to A.9.

4. The trial Court had taken cognizance of the case against A.1 to A.9, furnished copies of documents to the accused and examined them under Section 239 Cr.P.C. for the charges under Section 420 I.P.C. and Section 5 of the Act of 1999. During the course of trial, the prosecution examined P.Ws.1 to 6 and marked Exs.P.1 to P.11. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., explaining the incriminating circumstances appeared

against them in the evidence of the prosecution witnesses. On behalf of he accused, Exs.D.1 to D.21 were marked.

5. The trial Court, after hearing arguments of both sides and considering the material available on record, acquitted A.2 to A.9 under Section 248(i) Cr.P.C. for the offence under Section 5 of the Act of 1999 and also acquitted A.1 to A.9 for the offence under Section 420 I.P.C. and recorded conviction and sentence against A.1 as stated supra. Questioning the said conviction and sentence recorded against A.1, the present appeal is preferred.

6. Learned counsel for the appellant-A.1 would submit that the trial Court gravely erred in convicting A.1 without co-relating the offences committed by A.1 which are purely civil in nature; the trial Court erred in convicting A.1 by not properly appreciating the entire evidence on record; Section 5 of the Act of 1999 has no application to the instant case; and ultimately, prayed to set aside the conviction and sentence recorded against the appellant-A.1.

7. On the other hand, learned Additional Public Prosecutor would submit that the trial Court had elaborately dealt with the issue and rightly convicted and sentenced the appellant-A.1 for the offence under Section 5 of the Act of 1999, the said finding is based on the evidence on record; there is nothing to interfere with the finding of the trial Court; and ultimately, prayed to dismiss the appeal.

8. In view of the contentions putforth by both sides, the point for determination is, whether the conviction and sentence recorded by the trial Court against the appellant-A.1 for the offence under Section 5 of the Act of 1999 is sustainable?

9. **POINT**: The evidence of P.W.1-V.Venkata Ratnam reveals that he is a resident of Ashok Nagar, Patamata. One K.Sreeramulu, who is a tenant in the house of P.W.1, introduced P.W.1 to A.1-Managing Director of M/s. V.N.K. Chits and Finance (P) Limited, Patamata, Vijayawada. The evidence of P.W.1 reveals that on 09.05.2001, he went to the office of M/s. V.N.K. Chits and Finance (P) Limited, Patamata, Vijayawada, and offered to deposit an amount of Rs.2,00,000/-. Then A.1 requested P.W.1 to deposit the said amount by way of two cheques, each for Rs.1,00,000/-, one in the name of A.1 and another is in the name of Santhi Sri (A.4), who is wife of A.1. P.W.1 issued a cheque for Rs.1,00,000/- bearing No.987865 dated 09.05.2001, drawn on Syndicate Bank, Kanuru, in the name of A.1, and another cheque was issued by P.W.1, bearing No.987866 dated 09.05.2001 drawn on Syndicate Bank, Kanuru, for a sum of Rs.1,00,000/- in favour of A.4-wife of A.1. P.W.1 stated in his evidence that A.1 agreed to pay interest at 24% per annum and accordingly paid interest till 09.10.2004 and thereafter, he did not pay interest or the principal amount on demand made by him and became defaulter. P.W.1 filed Ex.P.1-report with the police on 13.11.2001.

10. The evidence of P.W.2-Veeramachineni Jayaprada reveals that she is retired from Defence Department. A.1 is residing in the same apartment where P.W.2 is residing. A.1 after establishing the finance company, contacted P.W.2 and invited to deposit amounts with his company. P.W.2 deposited with M/s. V.N.K. Chits and Finance (P) Limited. The deposits by P.W.2 according to her evidence are as follows:

1) P.W.2 and one Susmita deposited a sum of Rs.1,20,000/- on 11.04.2000 under Ex.P.3-receipt.
2) Rs.75,000/- was deposited in the name of V.Swapna on 24.03.1999 under Ex.P.4-receipt.
3) Rs.50,000/- was deposited in the name of P.W.2 on 26.05.1999 under Ex.P.5-receipt.
4) Rs.50,000/- was deposited in the name of P.W.2 on 21.10.1999 under Ex.P.6-receipt.
5) Rs.40,000/- was deposited in the name of P.W.2 on 18.06.2000 under Ex.P.7-receipt.
6) Rs.1,00,000/- was deposited in the name of P.W.2 on 12.01.2001 under Ex.P.8.

The original deposit receipts issued by M/s. V.N.K. Chits and Finance (P) Limited, Patamata, Vijayawada, are marked as Exs.P.3 to P.8 through the evidence of P.W.2. P.W.2 further stated that A.1 signed on Exs.P.3 to P.8 and A.2 used to type the receipts and some times A.2 used to write in her handwriting. Exs.P.4 and P.5 are in the handwriting of A.2 and other receipts are in typing. P.W.2 stated that Exs.P.4 and P.5 were renewed and the endorsement was made on the back of Exs.P.4 and P.5 duly signed by A.1 as Managing Director.

11. The evidence of P.W.3-M.Nagaprasunamba reveals that she made deposits to a tune of Rs.1,50,000/- on different phases with M/s. V.N.K. Chits and Finance (P) Limited, Vijayawada, which are as follows:

1) Rs.15,000/- on 26.12.1998.
2) Rs.15,000/- on 12.11.1998.
3) Rs.30,000/- on 20.11.1998.
4) Rs.15,000/- on 21.08.2001.
5) Rs.15,000/- on 23.07.2000.
6) Rs.15,000/- on 23.07.2000.
7) Rs.20,000/- on 23.07.2000.

P.W.2 stated that the certificates for the deposits are prepared by A.2 and signed by A.1. The rate of interest was agreed at 24% per annum. A.1 and A.2 paid interest on the deposits of P.W.3 till September, 2001, and thereafter, they failed to pay interest. P.W.3 stated that A.1 issued three cheques for Rs.40,000/-, Rs.40,000/- and Rs.30,000/-, in total Rs.1,15,000/- and when they were presented, all the cheques were dishonoured. P.W.3 filed cases under Section 138 of the Negotiable Instruments Act against A.1.

12. The evidence of P.W.4-Velagapudi Kasturi reveals that the she is one of the subscribers of M/s. V.N.K. Chits and Finance (P) Limited and she entered into a chit for Rs.1,00,000/- with A.1 and on maturity, the amount has been paid by A.1.

P.W.5-Shaik Ahamed stated that he worked as the Accountant in the company from 1999-2000.

13. There is a specific evidence of P.W.1 that he gave a cheque for Rs.1,00,000/- in favour of A.1 and also another cheque for Rs.1,00,000/- in favour of wife of A.1. Those cheques were given in the name of A.1 and his wife at the instance of A.1 itself. The issue of those cheques was not in dispute. There is also evidence of P.W.1 that A.1 agreed to pay interest at 24% per annum and he paid interest till 09.10.2004, thereafter he committed default in payment of the amount deposited and interest. Those two cheques were not invested in M/s. V.N.K. Chits and Finance (P) Limited. A.1 as Managing Director of M/s. V.N.K. Chits and Finance (P) Limited received huge amounts from P.W.2. The same has come up in the evidence of P.W.2. The receipts passed and signed by A.1 were marked as Exs.P.3 to P.8. Similarly, A.1 has also on behalf of M/s. V.N.K. Chits and Finance (P) Limited received money from P.W.3 and subsequently issued cheques to settle the amounts due to P.W.3. The defence set up by A.1 that he did not receive money was negatived by the trial Court assigning number of reasons disbelieving the documents marked on behalf of A.1.

14. In the instant case, A.1 received money in his personal capacity from P.W.1. He also received money on behalf of M/s. V.N.K. Chits and Finance (P) Limited, the same is substantiated by oral evidence as well as the documentary

evidence before the trial Court. There is no reason to disbelieve the evidence of P.Ws.1 to 3 and the documents marked on behalf of the prosecution. The trial Court while analyzing the entire evidence on record, has given elaborate reasons and negated the contentions raised on behalf of A.1 and ultimately, found him guilty of the offence punishable under Section 5 of the Act of 1999. The submission made on behalf of A.1 is that Section 5 of the Act of 1999 has no application for the money received as Managing Director of the Company. The Company is registered under the Companies Act. It is established that A.1 did not return the deposits and pay interest thereon as agreed for the money received in his personal capacity and on behalf of the company. The cause of action to this case is receipt of the deposits and default in payment of the same with agreed rate of interest. In such an event, Section 5 of the Act of 1999 has application and the default is punishable under the said provision, as held in a decision of this Court in **Gourishetty Prabhakar v. State of A.P. and Gampa Suvarna**[1].

15. Section 5 of the Act of 1999 is penal provision for defaults committed by any financial establishment. Any aggrieved person can invoke the said penal provision. Therefore, the victims of this case have a right to invoke the provisions of Section 5 of the Act of 1999. As seen from the evidence on record, M/s. V.N.K. Chits and Finance (P) Limited is a company registered under the Companies Act. It is not a

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[1] 2002(1) ALT (Crl.) 492 (A.P.) = 2002(1) ALD (Crl.) 613 (A.P.)

banking company within the meaning of Section 5(c) of the Banking Regulation Act. The decision rendered in **K. Jayaprakash Ram and others v. Additional Director General of Police, C.I.D., Hyderabad and others**[2] holds the field. Therefore, the defence set up by A.1 that as M/s. V.N.K. Chits and Finance (P) Limited is a company registered under the Companies Act, the victims cannot proceed under Section 5 of the Act of 1999, is unsustainable. While dealing with the subject matter of the appeal, the trial Court has meticulously analysed the entire evidence on record and based its conviction assigning reasons. The findings of the trial Court are not contrary to the law. The trial Court had imposed adequate sentence. Therefore, there needs no variation in the sentence imposed. The same are liable to be confirmed. Consequently, the appeal is liable to be dismissed.

16. In the result, the conviction and sentence recorded against the appellant-A.1 for the offence under Section 5 of the A.P. Protection of Depositors of Financial Establishment Act, 1999, *vide* judgment dated 25.07.2006 in Calendar Case No.2 of 2006 by the trial Court, are confirmed.

17. The Criminal Appeal is dismissed accordingly. As a sequel, miscellaneous petitions, if any pending in this appeal, shall also stand dismissed.

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Dr. SHAMEEM AKTHER, J

Date: 06.02.2018
Siva/DRK

[2] 2003(1) ALD (Crl.) 768 (A.P.) = 2003(2) ALT (Crl.) 233 (A.P.)

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