

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 34 of 2018**

Order Reserved on : 09/08/2019

Order Delivered on : 11/09/2019

- State Of Chhattisgarh, Through : The District Magistrate, Durg, District Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Gourav Dewangan Son Of Sunil Kumar Dewangan, Aged About 32 Years R/o Sector 7, Street 41, Qtr. No. 3/B Bhilainagar, Police Station Bhilainagar, District Durg, Chhattisgarh.
2. Gunjan Dewangan, Son Of Sunil Kumar Dewangan, Aged About 29 Years R/o Sector 7, Street 41, Qtr. No. 3/ B Bhilainagar, Police Station Bhilainagar, District Durg, Chhattisgarh.
3. Mukesh Shrivastava, Son Of Harishchandra Shrivastava, Aged About 54 Years R/o 99 Ashirwad Villa, Nipaniya, Police Station Lasudiya, District Indore, Madhya Pradesh.

---- Respondents**And****CRR No. 395 of 2018**

- State Of Chhattisgarh Through- Police Station New Rajendra Nagar, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Bala Saheb Bhapkar S/o Keshav Rao Bhapkar Aged About 56 Years R/o- Sukwani Garden, Sai Darbar Link Raod, Chinchwad, Police Station Chinchwad, District- Pune (Maharashtra)
2. Shashank Bhapkar S/o Bala Sahen Bhapkar Aged About 25 Years R/o- Sukwani Garden, Sai Darbar, Link Road, Chinchwad, Police Station Chinchwad, District- Pune (Maharashtra)
3. Vandana Bhapkar W/o Bala Saheb Bhapkar Aged About 46 Years R/o- Sukwani Garden, Sai Darbar, Link Road, Chinchwad, Police Station Chinchwad, District- Pune

(Maharashtra),

---- Respondents

And

CRR No. 400 of 2018

- State Of Chhattisgarh Through- Police Station New Rajendra Nagar, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Sachin Damor S/o Ram Singh Damor Aged About 30 Years R/o- Ward No. 1, Thadala, District- Jhabua, (M.P.), District : Jhabua, Madhya Pradesh
2. Durga Prasad Sahu S/o Harilal Sahu Aged About 30 Years R/o- Village Kurud, Police Station Mandir Hasaud, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Hemant Mahilang S/o Indal Mahilang Aged About 48 Years R/o- Village Saunperi, Police Station Mandir Hasaud, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. Santosh Chaturvedi S/o Chhotelal Chaturvedi Aged About 40 Years R/o- Village Baktara, Police Station Mandir Hasaud, Raipur, District-Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

And

CRR No. 401 of 2018

- State Of Chhattisgarh Through- Police Station Devendra Nagar, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Bisahulal Sahu S/o Hemlal Sahu Aged About 38 Years R/o- Village Devri, Post Khorsi, Police Station Shivarinarayan, District- Janjgir-Champa, Chhattisgarh.,
2. Radheshyam Patel S/o Late Govind Ram Patel Aged About 42 Years R/o- Village Karmandi, Police Station Uрга, Tehsil And District- Korba, Chhattisgarh.

---- Respondents

And**CRR No. 406 of 2018**

- State Of Chhattisgarh Through- Police Station Azad Chowk, Raipur, District- Raipur, Chhattisgarh.,

---- Petitioner**Versus**

1. Omprakash Awasthi S/o Late Kripa Shankar Awasthi Aged About 49 Years R/o- House No. 49, Muskan Residency, Lalpur, Police Station- Tikarapara, Raipur, District- Raipur, Chhattisgarh.
2. Rajeev Giri @ Rajendra Giri S/o Tejveer Giri Aged About 40 Years R/o- Sector-2, Professor Colony, Police Station Purani Basti, District- Raipur, Chhattisgarh.

---- Respondents**And****CRR No. 438 of 2018**

- State Of Chhattisgarh Through Police Station Telibandha, Raipur, Distt. Raipur, Chhattisgarh.,

---- Petitioner**Versus**

1. Ramesh Kumar Saini S/o Chhaju Ram Saini, Aged About 32 Years R/o Ward No. 11, Police Station City, District Hitar, Presently Goutam Vihar, Devpuri, Police Station New Rajendra Nagar, Raipur, District Raipur, Chhattisgarh.
2. Vishwanath Sahu S/o Palat Ram Sahu, Aged About 35 Years R/o Near Hanuman Mandir, Gudiyari, Raipur, District Raipur, Chhattisgarh.
3. Manohar Dhivar S/o Bhagat Ram Dhivar, Aged About 40 Years R/o Village Dumartarai, Post Devpuri, Police Station Mana Camp, R/o Near Hanuman Mandir, Gudiyari, Raipur, District Raipur, Chhattisgarh.
4. Barsanlal Sahu S/o Daulal Sahu, Aged About 43 Years R/o Village Boriyakhurd, Near Azad Chowk, Tikarapara, R/o Near Hanuman Mandir, Gudiyari, Raipur, District Raipur, Chhattisgarh.
5. Sukhnandan Sahu S/o Samaru Ram Sahu, Aged About 35 Years R/o Durga Chowk, Amlidih, Police Station New Rajendra Nagar, R/o Near Hanuman Mandir, Gudiyari, Raipur, District Raipur, Chhattisgarh.
6. Umashankar Sahu S/o Late Ghasiram Sahu, Aged About 35 Years R/o Fafadih, New Ganj Mandi Road, Police

Station Ganj, R/o Near Hanuman Mandir, Gudiari, Raipur, District Raipur, Chhattisgarh.

7. Chandra Shekhar Sahu S/o Angad Ram Sahu, Aged About 38 Years R/o Nahar Road, Sumit Nagar, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
8. Vijay Kumar Sahu S/o Ratanu Sahu, Aged About 28 Years R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
9. Daya Neware S/o Late Umashankar Neware, Aged About 40 Years R/o Behind Sent Joseph School, Amlidih, Police Station New Rajendra Nagar, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
10. Bhupendra Hirwani S/o Late Chintaram Hirwani, Aged About 48 Years R/o Barounda, Mandhar, Police Station Vidhansabha, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
11. Chhabi Ram Sahu S/o Puranlal Sahu, Aged About 30 Years R/o Dunda, Police Station Sejbahar, Naya Raipur, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
12. Kanhaiya Lal Sahu S/o Fulak Ram Sahu, Aged About 54 Years R/o Supela, Police Station Bhakhara Dhamari Hal, Dunda, P. S. Sejbahar, New Raipur, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
13. Suraj Nirmalkar S/o Indal Nirmalkar, Aged About 51 Years R/o Near Dudhadhar Mandir, Mathpara, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
14. Nand Kumar Vaishnav S/o Govardhan Vaishnav, Aged About 45 Years R/o Village Lanja, Police Station Simga, Dist. Baloda Bazar Bhatapara, Chhattisgarh.
15. Rajendra Giri Goswami S/o Mani Giri Goswami, Aged About 46 Years R/o Tatibandh, Sahupara, Bhind Sheetalapara, Police Station Aamanaka, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
16. Smt. Ritu Giri Goswami S/o Mani Giri Goswami, Aged About 40 Years R/o Tatibandh, Sahupara, Bhind Sheetalapara, Police Station Aamanaka, R/o Near Mausam Vibhag, Police Station Tikarapara, Raipur, District Raipur, Chhattisgarh.
17. Ramesh Choudhary S/o Surajmal, Aged About 43 Years R/o Gwalior, Distt. Gwalior, Madhya Pradesh.

---- Respondents

And

CRR No. 447 of 2018

- State Of Chhattisgarh Through- Police Station Rakhi, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Avkash Pathak S/o Late Kanti Kumar Pathak Aged About 53 Years R/o- Village Nawagaon, Tehsil Pandariya, Police Station Pandatarai, District- Kabirdham, Chhattisgarh. Presently Resident Of Ahmadji Nagar, Behind Subhash Stadium, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Smt. Jyoti Pathak W/o Avkash Pathak Aged About 48 Years R/o- Village Nawagaon, Tehsil Pandariya, Police Station Pandatarai, District- Kabirdham, Chhattisgarh. Presently Resident Of Ahmadji Nagar, Behind Subhash Stadium, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri R.S. Baghel, Dy. A.G.
For Respondents	:	Shri B.P. Sharma, Shri Vivek Kumar Tripahti, Shri Shikhar Sharma with Shri Raghavendra Pradhan, Shri Raza Ali, Shri Shobhit Mishra on behalf of Smt Fouzia Mirza, Advocates for respective respondents.

Hon'ble Smt. Justice Rajani Dubey

C A V Order

11/09/2019

01. This order shall govern disposal of aforesaid criminal revisions as the issue involved in these petitions is identical.

02. The CRR Nos. 34/2018, 395/2018, 400/2018, 401/2018, 406/2018, 438/2018 and 447/2018 filed by the State of Chhattisgarh through District Magistrate, Durg are directed

against the order dated 24.07.2017, 10.11.2017, 10.11.2017, 10.11.2017, 10.11.2017, 10.11.2017 & 10.11.2017 passed in Special Criminal Case No.02/2017, 01/2016, 07/2016, 05/2016, 08/2016, 04/2016 & 02/2017 by the Sessions Judge/Special Judge, Durg and Sessions Judge, Raipur, (constituted under The Chhattisgarh Protection of Depositors Interest Act, 2005) (for short 'the Act, 2005) respectively, whereby the learned Sessions Judge has discharged respondents from the charge under Section 10 of the Act, 2005, and remanded the case for trial in other section of Indian Penal Code.

03. Brief facts of the case are that respective respondents were engaged in different business of doubling the amount or paying higher interest on the deposit made by complainants. Some respondents have paid interest for considerable period and thereafter stopped paying and some of them escaped from the spot without paying the interest and the principal amount and thereby committed cheating. After registration of offence, police investigated the matter and charge sheet was filed against respondents under Section 420/34 IPC and Section 10 of the Act, 2005. When the matter was fixed for framing of charges, the respondents objected that under the Act 2005, the complaint has to be filed only by competent authority, not below the rank of District Magistrate, the same was not done in their case, and therefore, the learned trial Court discharged the respondents of the offence punishable

under Section 10 of the Act, 2005 and sent the matter back to the Chief Judicial Magistrate. Hence, these revision petitions.

04. Learned Dy. A.G. for the State/petitioner submits that the learned trial Court has passed the impugned order in a cryptic and laconic manner without appreciating the material available on record. The learned trial Court has exonerated the accused persons/respondents at very initial stage. He further submits that the order of learned trial Court is based on wrong interpretation of legal provisions of the Act, 2005, and therefore, the same is liable to be set aside. He also submits that though, as per Section 5 of the Act, 2005, the Collector concerned is competent authority to entertain the complaint made under this section but the State Government, by notification, may appoint any competent authority much below the rank of Collector as competent authority for a complaint related to the Act, 2005 between the company or regarding the works of the company. It is next submitted that under the Act, 2005, a Special Court has been constituted by the notification of the State Government to prosecute the offence related to the Act, 2005, and the Special Court can take cognizance of the offence without being committed the case to it, but the learned Court below discharged the respondents straightway from the Section 10 of the Act, 2005, which is improper.

05. The learned counsel for respective respondents supporting the impugned order submit that under Section 7 of

the Act, 2005, the charge sheet has to be filed only by the competent authority not below the rank of District Magistrate. It has been further submitted that in this case the charge sheet has not been filed by the competent authority, therefore, the learned Court below has not committed any error in passing the orders impugned and, therefore, revision petitions are liable to be dismissed.

06. I have heard learned counsel for the parties and perused the material available on record.

07. The learned trial Court, in its detailed order, observed that it is the mandatory provision of Section 7 of the Act, that the competent authority (District Magistrate) has to file complaint and then only accused can be prosecuted under the Act, 2005. Section 7 of the Act, 2005 provides for attachment and power of special Court, which reads thus:-

Attachment of properties on default of return of deposit & power of special court regarding attachment.

7. (1) *Where the competent authority is satisfied,*
 - (i) *Upon complaints received from depositors or otherwise, that any financial establishment has fraudulently defaulted.*
 - (ii) *That any financial establishment is acting in a calculated manner with an intention to defraud the depositors and such financial establishment is not likely to return the deposits, the competent authority 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 the financial establishment or in the name of any other person or establishment, or if it appears 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, partner, director, manager or member of the said financial establishment, as the competent authority may think fit and publish the order in local newspaper of the area.

- (2) The competent authority shall apply within fifteen days from the date of the order to the special court for making the ad-interim order or attachment absolute.*
- (3) The competent authority may also make an application to any special court or designated court or any other judicial forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject pertaining to any money or assets of a financial establishment under any similar enactment in respect of money or property or assets belonging to or ostensibly belonging to a financial establishment or any person notified under the Act situated within the territorial jurisdiction of that special court or designated*

court or any other judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of the Act.

- (4) Upon receipt of an application under sub section (2) of section (7), the special court shall issue show cause notice accompanied by copy of application filed by the competent authority to the financial establishment or any other person whose property is attached that why the order of attachment should not be made absolute.*
- (5) Any person having any interest or claim in the property attached under sub-section (1) may apply to the special court within 45 days of the order of attachment for their claim. After receiving the application/objection the special court shall, after giving an opportunity of being heard to the applicants and the competent authority, may make such order as deem fit.*
- (6) For hearing of application/objection provision of the Code of Civil Procedure, 1908, shall be applicable.*
- (7) If no cause is shown and no objections are made on or before the specified date, the special court shall forthwith pass an order making the ad-interim order of attachment absolute.*
- (8) The special court may at the time of passing the final order pass an order of attachment absolute or in part. In making such order the special court shall not release such part of property so attached as is necessary for repayment to depositors.*

(9) *The special court, may on application by the competent authority, pass such order or issue such direction as may necessary for sale of property attached and for distribution among the depositors of the money realised from such sale.*

(10) *Where an application is made by any person duly authorised or specified by any other State Government under similar enactment empowering him to exercise control over any money or property or assets attached by that State Government, the special court shall exercise all its powers, as if such an application were made under the Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.*

08. Further, Section 13 of the Act, 2005 provides power and procedure of Special Court, which reads thus:-

Procedure and powers of Special Court regarding offences.

13. *For trial of the offence the procedure prescribed for the warrant trial in the Code of Criminal Procedure, 1973 (No. 2 of 1974) shall be applicable and special court may take cognizance of the offence without being committed the case to it.*

09. It is clear from the Act, 2005, that Section 7 provides for attachment of properties on default of return of deposits & power of special court regarding attachment. In sub-section 1 to 10 of Section 7, this Act provides as to what is the

procedure to be followed for attachment of property. This section nowhere speaks that the charge sheet has to be filed by the competent authority, and for this purpose, Section 13 of the Act, 2005, provides that procedure prescribed for the warrant trial in the Code of Criminal Procedure, 1973 (No.2 of 1974) shall be applicable and special court may take cognizance of the offence without being committed the case to it. It is clear from Section 13 of the Act, 2005 that for criminal proceeding, proceeding of warrant trial shall be applicable.

10. Hon'ble the Supreme Court, in the matter of **Nathi Devi V. Radha Devi Gupta**¹, has dealt with the interpretation of Statutes, para 13 thereof, reads thus:-

“13. *The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt*

1 AIR 2005 SC 648

any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

11. The learned trial Court, in its detailed order, has wrongly interpreted Section 7 of the Act, 2005, which was only for attachment of properties and not for criminal trial. Learned State counsel has argued that the State Government, by way of notification, constituted special court to try the cases related to Act, 2005, and Section 13 of the Act, 2005 clearly speaks that special court may take cognizance of the offence without being committed the case to it. It doesn't look beyond the written words. If the words given in the statute are lucid and explicit, it is not for the judges to go beyond that language or words to try and establish what the legislature might have meant by using that word. Section 13 of the Act, 2005 empowers the special court to take cognizance of the offence without being committed the case to it. The learned trial Court, only on the basis that the charge sheet has not been filed by the competent authority, straightway discharged the respondents from Section 10 of the Act, 2005 wrongly interpreting the Statute, which cannot have affirmation by this

Court and is liable to be set aside.

12. In the result, the aforesaid revision petitions are allowed. The orders impugned are hereby set aside. The trial Court, after hearing both the parties, frame charges under the Act, 2005 and proceed in accordance with law.

Sd/-
(Rajani Dubey)
JUDGE

Vijay