NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved On 16.09.2019

Order Delivered On 16.12.2019

CRR No. 1145 of 2018

1. Raghuvir Sing Rathore S/o Gangu Sing Rathore Aged About 37 Years R/o Village Goudi Devsi, Badnagar, District Ujjain Madhya Pradesh.
2. Dharmendra Sing Songara S/o Narendra Sing Songara, aged About Years, R/o 34, shikshak Colony, Badnagar, district Ujjain Madhya Pradesh
3. Jagdish Chandravyas S/o Laxminarayan Vyas Aged About Year R/o Kardiya Aloud, District Ratlam Madhya Pradesh
4. Rajendra Singh Sisodiya S/o Ram Sing Sisodiya Aged About R/o Jamushia Shankar Aloud, District Ratlam Mahdhya Pradesh

---- Applicants

Versus

- State Of Chhattisgarh Through Police Station Basantpur Rajnandgaon District Rajnandgaon Chhattisgarh.

---- Respondent

For Applicants	:	Mr. Bhashkar Pyasi, Adv.
For State	:	Mr. Anil Tripathi, PL

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Order

16.12.2019

1. The present revision petition has been filed by the applicants against the order dated 08.06.2018 passed by learned Sessions Judge, Rajnandgaon (C.G.) in Sessions Trial No. 58/2017 whereby the learned Sessions Judge dismissed the prayer of applicants for being discharged under Section 239 of Cr.P.C.

2. Brief facts of the case are that, complainant Rajwantin Sahu filed a written complaint before Police Station against the applicants under Section 420/34 of IPC and Section 10 of Chhattisgarh

Protection of Depositors Interest Act, 2005, on the ground that, applicants are Director of the Company namely Arogya Dhan Varsha Developers and Allied Limited. Complainant Rajwantin Sahu sold her house to the tune of Rs. 11,00,000/- (Eleven Lakh Rupess) and out of which, one Mansukh Lal Sonwani deposited amount of Rs. 9,50,000/- (Nine Lakh Fifty Thousand Rupees) in his own account and, thereafter invested the same amount in the aforementioned company without the consent of the complainant. Complainant neither received her money back nor any interest has been paid till date, and at present, the said company is not operating its business in the State of Chhattisgarh. Police registered criminal case against the applicants and, after completion of investigation, charge-sheet has been filed and criminal case has been registered against the applicants. Applicants made a prayer for their discharge of the alleged offence before learned Session Judge but the same was dismissed by learned sessions judge. Hence, this petition filed by the applicants.

3. Learned counsel for the applicant submits that it is Mansukh Lal Sonwani who has deposited the money in his own account and thereafter, amount has been invested in the company of applicants. Applicants are Director of the Company, and their agent has not induced the complainant Rajwantin Sahu to invest the money in the company of applicants. He further submits that learned trial Court failed to appreciate that Rajwantin Sahu does not come within the purview of depositor as the Act, 2005 provides that, depositor means person who makes deposit with company and includes a legal representative administrator assignee of the depositor. He next submits that learned trial Court failed to appreciate the provision of Section 5 of the Act, 2005 which provides that the State government may by notification appoint any authority not below the rank of District Magistrate and competent authority for the purpose of the Act and Section 7 of the Act, 2005 provides that where the competent authority is satisfied upon components received from depositors or otherwise that any financial establishment has fraudulently defaulted then the competent authority is empowered to make attachment of

property on default of return of deposits. Learned counsel for the applicant added that learned trial Court failed to appreciate that, in the facts and circumstances of the case offence under Section 420/34 of IPC is not made out against the present applicants, therefore, the applicants are liable to be discharged of the offence punishable under Section 420/34 of IPC and Section 10 of Chhattisgarh Protection of Depositors Interest Act, 2005.

4. On the other hand, learned counsel appearing on behalf of State has supported the impugned order of the Court below. He submits that Court below has not committed any error in passing the impugned order.

5. Heard learned counsel for the parties and perused the material on record including the impugned order.

6. Sections 7 & 10 of the Chhattisgarh Protection of Depositors Interest Act, 2005 provides as under:-

> "7. **Attachment of properties on default of return of deposits and power of special court regarding attachment.** -
>
> (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 interest 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 subsection (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 or 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.

10. Punishment for defaults by financial establishment. - *Where any financial establishment fraudulently defaults or any financial establishment acts in a calculated manner with an intention to defraud the depositors; every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment shall be punished with imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which shall not be less than one lakh rupees but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten lakhs rupees."*

Thus, Section 7 of the Act, 2005 denotes that it is only for attachment of properties and not for criminal trial.

07. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether prima-facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at the stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

08. In the light of above principles, facts of the case, learned Session Judge rightly observed that there are allegations against the applicants. The findings recorded by the Court below have been arrived at after due appreciation of the prima-facie material and documents available on record and, as such, do not require any interference by this Court.

09. Accordingly, the revision being without any substance is liable

to be dismissed and is dismissed as such.

Sd/-
(Rajani Dubey)
JUDGE

Vijay Sahu