THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.776 of 2009

ORDER :

The petitioner is one P.Janaki Rama Rao (A.9) among 19 accused in C.C.No.9 of 2004 on the file of the Metropolitan Sessions Judge-cum-Special Court under Andhra Pradesh Protection of Depositors of Financial Establishments Act, Hyderabad, and the learned Sessions Judge has taken cognizance for the offences punishable under Sections 420, 406, and 477-A IPC and Sections 3 and 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act (for short, 'the Act'), which is out come of Crime No.201 of 2003 of Central Crime Station, White Collar Offences, Team-I, Hyderabad, dated 06.05.2003, and the police supra after investigation by citing as many as 39 witnesses including the four Investigating Officers-LWs.36 to 39, filed charge sheet, and during its pendency, the petitioner herein since obtained interim order in the year 2009, the case insofar as against him was split up and re-numbered as C.C.No.7 of 2017 and he is now seeking to quash the said C.C.No.7 of 2017 proceedings.

2. The contentions in the grounds are that even taken on face value of the entire investigation material there is no whisper to show any role of the petitioner for any of the offences and otherwise he resigned from his Directorship with effect from 25.03.1999 though he is one of the original Directors along with other accused from 28.03.1998 and once resigned, as now control on the affairs for

discharge of the liability of the deposits and once there is no any vicarious liability that too when not responsible for the day-to-day affairs, the taking of cognizance against the petitioner is unsustainable and similarly situated some of other accused moved this Court by quash petitions and so far as A.4-A.Srinivasa Rao concerned, his similar contention was accepted in Crl.P.No.3827 of 2005 by another Bench of this Court, by order, dated 21.06.2006, holding that A.16 already moved quash petition Crl.P.No.3736 of 2004 that was allowed on 10.11.2004 and reported as **H.Ramprasad v. State of A.P. and another**[1] and similar benefit, he is entitled and it is observed that he is not made with any specific allegation of how responsible in the charge sheet from its perusal, but for against the Chairman and his kith and kin and he is not related to the Chairman and because no specific role attributed to him in the charge sheet except saying he is also liable along with the Chairman and other Directors, thereby there is no *prima facie* case in quashing the proceedings and A.7-A.V.Ramana moved similar petition in Crl.P.No.1111 of 2007 and self-same Judge, who allowed the petition of A.4 supra, by order, dated 22.03.2017, allowed his application saying A.4’s petition in Crl.P.No.3827 of 2005 was allowed on 21.06.2006 referring to A.16 petition allowed and thereby from going through the contents of the charge sheet it is not mentioned as to how he is responsible for signing the resolutions at the instance of A.1 and there is no whisper of he gained anything

[1] 2005 (1) ALD (Crl.) 523 (AP)

out of the alleged amount misappropriated by A.1 and as to how he is responsible for a particular act of mismanagement or any act of cheating or breach of trust in the capacity as Director and thereby allowed the petition and also placed reliance on another petition filed by A.11 and the self-same Judge in Crl.P.No.1108 of 2007, by order, dated 22.03.2007, allowed the same referring to the order passed by him allowing the application of A.4 supra and the application of A.16 supra with self-same observations of no whisper against them as to how responsible for a particular act of mismanagement or act of cheating or breach of trust in the capacity of the Directors and A.13 filed another petition in Crl.P.No.4125 of 2005 and another Bench of this Court, by order, dated 19.07.2006, allowed the petition observing that A.4’s petition allowed so also that of A.16 supra and thereby and for the reason there is no specific allegation or averment to the effect of the petitioner-A.13 responsible for the management and affairs of the financial establishment, but for the allegations against Chairman and two of his brothers-in-law, who are joined as Directors, for cooperation and the wife of the Chairman if at all responsible for the entire administration used to be controlled by them and also placed reliance on similar petition filed by A.14 in Crl.P.No.1395 of 2005, that was allowed by another Bench of this Court on 19.07.2006 with observation of there are no specific allegations made against A.14 supra and similarly situated petitions of A.4 and A.16 among others were allowed earlier by this Court and thereby allowed the petition and also placed reliance on the petition filed by A.15-M.Sivaiah in Crl.P.No.1109 of 2007, that was allowed by the self-same Judge, who allowed the petition of A.4 and A.16 among others on 22.03.2007, with observation of he is one of the Directors of the Bank and Chairman used to come to the Bank daily and keep all the keys with him, entire administration under his control and he was in-charge of day-to-day affairs and there is no any specific allegation as to how the petitioner/A.15 to be liable and similarly situated petitions of A.4 and A.16 among others already allowed and thereby allowed the petition. The petitioner also placed reliance on the petition filed by A.17-K.Sandhya in Crl.P.No.2672 of 2007, dated 27.07.2007, allowing by another Bench of this Court with observation that from the perusal of the charge sheet prima facie allegations show as to others and not disclosing the petitioner is either Director or the person-in-charge of the Bank and thereby cannot be responsible for the alleged irregularities in defrauding the bank assets to a tune of lakhs of rupees by virtue of the position of A.1. It is contended therefrom in saying in view of the above as the petitioner is similarly situated, leave about he is resigned already on 25.03.1999, he cannot be made responsible and the proceedings are liable to be quashed.

3. Heard learned counsel for the petitioner with reference to the above.

4. Whereas it is the submission of the learned Public Prosecutor, representing the State, that there is a *prima facie* accusation with

reference to Section 5 of the Act and none of the judgments, but for referring to earlier judgments in quashing the application of the other Directors, not gone through the wording of Section 5 of the Act and thereby the quash petition is liable to be dismissed as mere Director is enough to fix vicarious liability along with the entity.

5. Perused the material on record.

6. The wording of Section 5 of the Act is relevant and necessary to re-produce herein for more clarity, which reads that :

> **"Penalty for default:** Where any financial establishment defaults in the return of the deposit either in cash or in kind or defaults in the payment of interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakhs."

7. Section 2 sub-section (c) speaks of the financial establishment and the A.1 entity is within the meaning of Financial Establishment not in dispute and coming to the definition of deposit in Section 2(b) it speaks that deposit means the deposit of a sum of money either in lump sum or installments made with a financial establishment for a fixed period for interest or return in any kind and what Section 5 of the Act speaks from reproduced above is any default in the return of the deposit in cash or kind or defaults in payment of interest on the deposit as agreed upon, it is not only every person responsible for the

management of the affairs of the financial establishment including the promoter, manager or member of the financial establishment shall be punished. Once such is the case, the fact that the petitioner was the Director not in dispute. Even from his say, he resigned as Director on 25.03.1999. It is not his case that by the time he submitted his resignation, the amount by deposit was not collected. It is not even shown what is the due date for payment of the deposit or interest therein, which constitutes the very offence under Section 5 of the Act from the combined reading of Section 5 read with 2(b) and (c) of the Act referred supra. Once such is the case, but for to say by mere Director not liable with any vicarious liability for the offences punishable under the IPC so far as the offence under Section 5 of the Act concerned, once mere Director is enough from the wording, there is nothing to quash the proceedings so far as the offence under Section 5 of the Act concerned.

8. Having regard to the above and in the result, the criminal revision case is allowed in part by quashing the cognizance order insofar as the IPC offences concerned and dismissed insofar as the offence under Section 5 of the Act, by left open all defences to raise during trial.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

6th February 2019

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