HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11216 of 2017

ORDER:

The petitioners are the A.5 to A.9 in C.C.No.18 of 2017 on the file of the learned Metropolitan Sessions Judge (for short, 'the MSJ'), Hyderabad. The respondents 2 to 4 are the defacto-complainants. It is on their private complaint, dt.30.03.1999 which is referred to police for investigation by the learned Magistrate, registered by police, Begumpet as Cr.No.112 of 1999 for the offences punishable u/sec.406, 415 and 420 IPC and subsequently referred to Central Crime Station (for short, 'CCS'), Hyderabad and after investigation filed charge sheet on 17.05.2017 mentioning Section 5 of the Protection of Depositors, Financial and Establishments Act, 1999 (for short, 'the Act') also, before the learned MSJ, Hyderabad who has taken cognizance and the same is now under impugnment.

2. The respondents 2 to 4 failed to attend to the notices even acknowledged. Heard the learned counsel for the petitioners and also the learned Public Prosecutor for the 1st respondent/State and perused the material on record.

3. The contentions in the quash petition vis-a-vis oral submissions of the learned counsel for the petitioners/A.5 to A.9 are that the A.1 is M/s Genius Financial Services Pvt. Ltd., (for short, 'the Entity') represented by A.2 among the Directors A.2 to A.9. The 2nd and 3rd complainants stated

deposited 6.30lakhs and 2.15lakhs respectively for the wide publicity given by the A.1-Entity and its Directors to give attractive interest along with incentive for the investments and obtained the Fixed Deposits (FDRs) with maturity period of 12 months and when the respective FDRs. were sent to the A.1-entity for repayment, after due date, by the R.2 and R.3 including R.4, the A.1-Entity represented by A.2 failed to pay and addressed a letter on 12.02.1998 to the R.1-1st complainant allegedly tendering apology for not keeping up their commitment to return the amounts and also addressed another letter dt.25.04.1998 and issued cheque bearing No.46992 for Rs.3,52,760/- drawn on Vijaya Bank in the name of R.2 that was returned dishonored and A.2 issued several cheques to the L.Ws. 3 to 11-the prosecution witnesses also in relation to repayment of similar FDRs and the police having taken 18 years to investigate the case from the date of registration of the crime violating the fundamental rights of the petitioners though they are available for investigation and included Section 5 of the Act also as if attracting though allegations are bald and that too there are no specific allegations against the petitioners-A.5 to A.9 and merely because they are mere Directors that too nominal Directors and not even signatories to the cheques cannot be made liable for whatever amounts deposited were paid back by cheques by the A.1-Entity represented by the A.2 and if at all there is any offence of cheating committed by A.1

represented by the A.2 for the cheques issued. Apart from it, there is no any breach of trust for no any entrustment. The A.6 and A.7 arrayed as accused in C.C.No.464/99 on the file of the XVII Metropolitan Sessions Judge, Hyderabad for the offence punishable u/sec.138 of the Negotiable Instruments Act (for short, 'the NI Act') and those proceedings were quashed in Crl.P.No.6193/99 by the High Court by order, dt.13.11.2001 with an observation of no any specific allegations against them as to their capacity as Directors and in the absence of showing they are in-charge of the day-to-day affairs with any specific role they played, to make liable for any offence from any connivance and consent in its commission and thereby cannot be made liable. The petitioners further submit that the above order supra is final. The learned Magistrate did not apply his mind to take cognizance against any of the petitioners and thereby the cognizance order is liable to be quashed.

4. The learned Public Prosecutor submits that the complaint filed after expiry of the period of deposits for its non-payment constitutes the offence against the A.1-Entity and its Directors and the investigation delay shall not save the victims for the A.1-Entity failed to pay the amount and cheques issued also part of the privy with dishonest intention and to cheat and all the offences thereby that attracts and there are no grounds to quash. Hence to dismiss the petition.

5. The sum and substance of the accusation in the charge sheet now necessary to refer speaks that 14 persons invested amounts during 1997 by FDRs that were due and payable by December,1998 which include the three defacto-complainants-R.2 to R.4 and there are three crimes in relation thereto covered by Cr.Nos.677, 679 and 689/2004 re-registered by CCS, Hyderabad outcome from the original crime and chargesheet filed against the A.1-Entity represented by its Managing Director V.G.Subramanyam, no other than A.2 individually also. The Directors A.3-Shahab Alam, A.4-S.Rama Krishna, A.10-Mrs.Sailaja, who were charge sheeted herein with a mention of separate chargesheet to be filed against them but for against A.4 shown died on 22.07.2009 and the others charged including the petitioners-A.5 to A.9 viz: P.Chandra Mohan Chowdary, A.6-Rohinton Noria, A.7-Bharath V.Epur, A.8-S.Dayanand and A.9-Smt. Vaidehi Rajagopalan, all are the Directors of the A.1-entity who started business and given publicity in luring public and in attracting with pretended incentives and interest in cause investing and in utterly failed to repay to R.2-G.Suryachandera Rao-L.W.1, an amount of 2 lakhs by FDR dt.31.12.1997 for one year and similarly to L.Ws.2 to 5 (G.Nagamani, G.Srilatha, G.Sureka and G.Ratnasree respectively) by FDRs similarly to the R.3-2nd complainant-Smt.G.Sundari wife of late Satyanarayana, and similarly the L.W.8-3rd complainant-Sowmaya Chandra Mouli, besides

L.W.7-G.V.S.R.Prasad, 2nd complainant-L.W.6 w/o Satyanarayana and the L.W.9-Sharada Krishnan also deposited besides those above Rs.72,000/- in her name and in the name of her son Aditya of Rs.16,000/- and in the name of K.Vashist of Rs.16,000/- and L.W.9-Smt. Sarada Krishnan deposited of Rs.30,000/-, L.W.10-P.Yadagiri of Rs.50,000/- jointly in the name of himself and his wife-Vijayalaxmi and even FDRs above matured and when they went and demanded the accused persons several times, they failed to pay. It is besides the above averred in the charge sheet that the A.1-Entity is limited by shares with authorized capital of 3 Crores divided into 30lakhs equity shares of Rs.10/- each with paid up capital of 27,72,230/- and A.2 is its Managing Director for a period of 5 years from 08.01.1995 as per the resolution of 1st Annual General Body Meeting, dt.17.08.1995 of A.1-Entity as wholetime Director and later he tendered his resignation but to continue as Director on the Board and he also Ex-Financial Advisor of the VST, A.5-P.Chandra Mohan Chowdary, who was a cigarette transporter of the VST, A.6-Rohinton Noria, a tobacco packer and transporter of VST,A.7-Bharat V.Epur and A.8-S.Dayanand as Directors of the Board and A.4-S.Ramakrishna since Entity Secretary of the VST is the Executive Director and Secretary of M/s Genius Financial Services Limited, A.9-Vaidehi Rajagopalan is also one of the Directors of the Board nominated by M/s Sanghi Industries and the A.3-Shahab Alam is the I.R. General Manager and

A.10-Sailaja as Manager in the said Firm sponsored by M/s Lovelock & Lewes, Chartered Accountants, as auditors of the A.1-Entity with their pretended expertise and experience in VST Executives in luring public to invest and to divert the funds formed 4 other companies viz; M/s Genius Infotech Limited, 2) Genius Business Services Limited 3) M/s Genius Agrotech Limited and M/s Genius Farms and Estates Limited. The A.2 opened account bearing No.CA3317 with State Bank of Hyderabad, Industrial Financial Branch, Panjagutta, left with no balance and also opened account bearing No.1100101407 with Oriental Bank of Commerce, S.D.Road, Secunderabad, left with no balance and the Entity went in liquidation and L.W.15-Official Receiver also unable to ascertain the assets of it and they did not furnish annual returns showing investment and assets of A.1-Entity and L.W.16 to L.W.18 are the Bank Managers to speak about the bank accounts and operations by A.2. The charge sheet also speaks about the High Court orders to the Begumpet police who originally registered the crime staying investigation vide orders in Crl.M.P.No.4264 to 4276 of 2001 and after the matter was transferred to the CCS Police, the stay was vacated and then the accused were arrested in 2006 and 2008 and investigation made and report filed that was taken cognizance which attracts offence u/sec.5 of the Act also.

6.There are more than 28 witnesses including the investors referred in the investigation done by the official witnesses L.Ws. 27 to 29 by filing common charge sheet out of the crimes supra after orders of Government covered by the G.O.Ms. No.44, dt.24.03.2017 with application of Section 5 of the Act and as Directors and Executives of the Entity but for the A.4 died of A.2 to A.10 along with the A.1-Entity are liable. The learned Special Jude-cum-MSJ taken cognizance for the offences against the accused on 24.07.2017 from the charge sheet dt.09.06.2017 insofar as the A.1, A.2, A.5 to A.9 for A.3, A.10 in abscondence and A.4 died. The accused were earlier on bail but for those in abscondence supra. The part-II CD shows 4 original crimes re-registered by CCS Hyderabad in 2004 and witnesses were examined in 2004 itself which is subsequent to the vacation of stay order obtained against the original crimes of 1999 by respective accused upto the stay vacated in 2004, from the CCS taken up investigation of the crimes of 1999. The investigation taken up by the CCS cannot be find fault for the delay but for after CCS police taken up investigation by cause vacated the stay. Record shows examination of the witnesses including the L.W.10 completed by end of January, 2005. No doubt, A.2-Rohinton Noria and A.3-Bharath V.Epur are in another crime covered by C.C.No.464 of 1999 while pending before the XVII Metropolitan Magistrate, Hyderabad for the NI Act offences, filed quash petition in Crl.P.No.6193 of 1999 where they are A.8 and A.9 and the same was allowed with observation that there must be specific allegation for the cheque bouncing case other than the drawer of the cheque and those responsible for day-to-day affairs for mere Directors cannot be made liable from they happened to be Directors and in the absence of showing how they are responsible for day-to-day affairs and in commission of the offences with the specific allegations.

7. The crimes are of the year 1999 from allegation of the deposits made in 1997 and maturity date fell in December, 1998 and despite deposits, failed to pay. There is no basis to the final report filed in 2017 after 17 or 18 years and even excluded period of stay of proceedings till 2004, later for 14 years delay in the investigation is fatal to the very sustainability of the proceedings that impairs the fundamental right to speedy trial.

8. Having regard to the above, leave about there is no specific allegation in the chargesheet against the A.5 to A.9 as to other than their status with VST, how responsible for the day-to-day affairs of A.1-Entity other than A.2-Managing Director till he resigned but for the A.1-Entity represented by its Director or Managing Director responsible for day-to-day affairs and specifically committed any acts with intention on the principle of *alter ego* so far as Sec.420IPC offence and mere Director of the entity may be enough for the offence u/sec.5 of the Act even belatedly included, these petitioners shown resigned in March to July, 1998 before the deposit maturity dates, from said delay of one and half decades investigation of the case, the **Criminal Petition is allowed**

quashing the proceedings in C.C.No.18 of 2017 on the file of the Metropolitan Sessions Judge, Hyderabad against the petitioners and the petitioners are acquitted and their bail bonds shall stand cancelled.

9. Consequently, miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:21.01.2019
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