IN THE HIGH COURT OF ORISSA, CUTTACK

CRLA No. 217 of 2020

From the orders dated 24.01.2020 and 01.11.2021 passed by the Presiding Officer, Designated Court, OPID, Balasore in C.T. No.8(C) of 2016.

Ramesh Chandra Sahu	....	Appellant
	-Versus-	
State of Odisha (OPID)	....	Respondent

For Appellant:	-	Mr. Sirish Chandra Tripathy
For Respondent:	-	Mr. Bibekananda Bhuyan Mr. J.P. Patra Special Counsel

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P R E S E N T:

THE HON'BLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 01.08.2022

S.K. SAHOO, J. The appellant Ramesh Chandra Sahu has filed this criminal appeal under section 13 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereafter 'O.P.I.D. Act') challenging the impugned order dated 24.01.2020 passed by the learned Presiding Officer, Designated Court, OPID Act, Balasore in C.T. No.8(C) of 2016 in rejecting the petition filed by the appellant under section 239 of Cr.P.C. for discharge. The appellant has also challenged the order dated 01.11.2021 of the learned trial Court in framing charges against him for commission of offences under sections 420/468/465/ 294/506 of the Indian Penal Code, sections 4/5/6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and section 6 of the O.P.I.D. Act.

2. On the basis of the complaint petition filed by one Ashesh Kumar Parida before the learned S.D.J.M., Nilgiri, 1.C.C. Case No.124 of 2015 was registered and the said complaint petition was forwarded under section 156(3) of Cr.P.C. to the Inspector in-charge of Berhampur police station and accordingly, Berhampur P.S. Case No.56 of 2015 was registered under sections 420/468/465/294/506 of the Indian Penal Code, sections 4/5/6 of the Prize Chits and Money Circulation

Scheme (Banning) Act, 1978 and section 6 of the O.P.I.D. Act.

It is the prosecution case as per the complaint petition that the appellant was the co-villager of the complainant who impersonated himself as the Zonal Director of Nilgiri Zone of Rose Valley Company and showed papers of the Company to the complainant and apprised him about different schemes of the Company and at last the complainant being convinced deposited money with the appellant in two schemes i.e. one at the rate of Rs.840/- (rupees eight hundred forty) per month and another scheme at the rate of Rs.1,000/- (rupees one thousand) per month. In this process, the complainant continued to deposit money for five years and collected receipts and two certificates were issued in favour of the complainant, one amounting to Rs.88,120/- (rupees eighty eight thousand one hundred twenty) and other amounting to Rs.1,05,744/- (rupees one lakh five thousand seven hundred forty four). When the complainant on completion of the period of five years came to the office at Nilgiri, he found the same to be locked and there was no employee present there. The complainant contacted the appellant over telephone, who told him that the office was shifted to his house and asked the complainant to meet him in his house. The complainant met the appellant in his house, who told him that the deposit has already been matured and he would get entire money within a month but thereafter, in spite of repeated approach of the complainant, the appellant did not refund back any money. On suspicion, the complainant approached the main office of Rose Valley at Bhubaneswar and he showed the maturity certificate issued by the appellant in his favour and he came to know that the maturity certificate so also money receipts were forged by the appellant and the same has got no connection with the Rose Valley Company and no documents of the complainant was available in the

Rose Valley Company. When the complainant confronted the appellant about his conduct in duping him in issuing fake certificates and receipts and asked him to refund the money immediately, the appellant abused the complainant in filthy language and admitted that he has not deposited any money taken by him from the complainant in the Rose Valley and issued fake certificates and he threatened the complainant with dire consequence. The complainant came to know that the appellant was a school teacher and he used to cheat people in this manner and misappropriated huge public money impersonating himself as the agent of different banks and that he has purchased costly cars and lands.

3. During course of investigation, the witnesses were examined, material documents were collected and the Investigating Officer found prima facie case against the appellant and accordingly, submitted charge sheet under sections 420/468/465/294/506 of the Indian

Penal Code, sections 4/5/6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and section 6 of the O.P.I.D. Act.

4. The appellant filed a petition for discharge under section 239 of Cr.P.C. before the learned trial Court. However, the learned trial Court after perusal of the first information report and the statements of the witnesses and the fact that the appellant posed himself as the Director of Rose Valley Company, Nilgiri Zone came to hold that the prima facie case is established relating to the commission of the offence under which charge sheet has been submitted and accordingly, rejected the petition for discharge as per the order dated 24.01.2020 and framed charges against the appellant under sections 420/468/465/294/506 of the Indian Penal Code, sections 4/5/6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and section 6 of the O.P.I.D. Act.

5. When the matter was taken up for admission on 14.02.2022, the learned counsel for the appellant contended that the framing of charge under section 6 of the O.P.I.D. Act against the appellant is not sustainable in the eye of law as the same is applicable to a person, who is responsible for the management of the affairs of the Financial Establishment and neither there is any document nor any oral evidence available on record to show that the appellant is in any way connected with the management of the affairs of the Financial Establishment. Notice was issued to the respondent and the case was adjourned from time to time in order to enable the learned counsel for the respondent to obtain instruction in terms of the order dated 14.02.2022 as to whether the appellant is in any way connected with the management of the affairs of Rose Valley or not. On 04.07.2022, when the matter was taken up, a submission was made on behalf of the learned Special Counsel appearing for the State of Odisha that prima

facie it appears that the appellant posed himself as a Director of Rose Valley Company and collected huge amount from the depositors and again time was sought for to verify whether as there is any material either oral or documentary to show that the appellant was in any way responsible for the management of the affairs of the financial establishment i.e. Rose Valley Company. Today, learned Special Counsel for the State of Odisha has produced the enquiry report received from the Officer in-charge of Berhampur police station which indicates that on examination of the complainant and witnesses, it was ascertained that the then Investigating Officer, S.I. Gopal Singh seized Rose Valley agent register 2007/2008 (98 agents) and the same left in zima to Ramesh Chandra Sahu after executing proper zimanama. Similarly the then Investigating Officer seized Rose Valley acknowledgment slips-14 sheets from the complainant which were issued by the appellant and during enquiry, the complainant produced a Xerox copy of undertaking dated 18.09.2015 given before Gram Sabha, Naranpur in which the appellant had mentioned that after December, 2015, he would refund back the deposited money slowly to the depositors. Similarly, it is mentioned that the appellant absconded from the locality after registration of the case at Berhampur police station. The enquiry report is taken on record.

6. Section 6 of the O.P.I.D. Act deals with punishment for default in repayment of deposits and interests honouring the commitment. In order to attract the ingredients of the offence, the following aspects are to be proved:-

(i) Default in returning the deposit by any Financial Establishment; or

(ii) Default in payment of interest on the deposit or failure to return in any kind by any Financial Establishment; or

(iii) Failure to render service by any Financial Establishment for which the deposits have been made.

In the event any of the aforesaid aspects is proved, every person responsible for the management of the affairs of the Financial Establishment shall be held guilty. 'Financial Establishment' has been defined under section 2(d) of the O.P.I.D. Act and 'deposit' has been defined under section 2(b) of the O.P.I.D. Act. The word 'default' in section 6 of the O.P.I.D. Act has been used in conjunction with honouring the commitment and therefore, it depends upon the reciprocal promises.

7. Mr. Bibekananda Bhuyan, learned Special Counsel appearing for the State of Odisha in O.P.I.D. Act matters fairly submitted that nothing has been seized during course of investigation to show that the appellant was in any way responsible for the management of the affairs of the Rose Valley, however

even though the appellant was not in the management of the affairs of Rose Valley but he posed himself as the Director of Rose Valley of Nilgiri Branch and collected deposits from different persons. He placed reliance in the case of **Prasan Kumar Patra and another -Vrs.- State of Odisha reported in (2020) 79 Orissa Criminal Reports 284** but the factual scenario of that case is quite distinguishable as the appellants of the said case were the Managing Director and Director of M/s. Z-Infra Construction Pvt. Ltd., Bhubaneswar, which is not the case here.

8. In view of the submissions made by the learned counsel for the respective parties and the materials available on record, I am of the humble view that one of the necessary ingredients of the offence under section 6 of the O.P.I.D. Act i.e. the person concerned must be responsible for the management of the affairs of Financial Establishment is conspicuously absent in the case. Therefore, the framing of charge

under section 6 of the O.P.I.D. Act is not sustainable in the eye of law and the same is hereby quashed. However, I am of the humble view that there are sufficient materials on record for framing of charges under sections 420/468/465/294/506 of the Indian Penal Code and sections 4/5/6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 and as such impugned order dated 01.11.2021 of the learned trial Court in framing of charges for such offences is quite justified and upheld. The appellant is now to face trial before the appropriate Court and not before the Presiding Officer, Designated Court, OPID, Balasore.

Accordingly, the Criminal Appeal is partly allowed.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 1st August, 2022/RKMishra