IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.22951 of 2017
&
Crl.M.P.Nos.13378 & 13379 of 2017

1. K.Palaniapan
S/o.Kaliannan ... Petitioner/ Accused 12

Vs.

The Reserve Bank of India,
Represented by its Authorised Officer,
Mr.R.Parthasarathy,
Department of Non Banking Supervision,
Chennai. ... Respondent/ complainant

Prayer:

Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.14 of 2001 pending on the file of Additional Metropolitan Magistrate, E.O.-I, Egmore, Chennai and quash the same.

For Petitioner : Mr.B.Natarajan

For Respondent : Mr.T.Poornam

ORDER

This petition has been filed to quash the private complaint filed against the petitioner for the offences under Sections 45QA, 58B (4 AAA) & 58C of the Reserve Bank of India Act, 1934, which was taken on file by the learned Additional Metropolitan Magistrate, E.O.-I, Egmore, Chennai in E.O.C.C.No.14 of 2001.

2. The crux of the allegation is that the Company, which goes by the name M/s.Krest Finlease Limited, has received several deposits from various persons and failed to repay the amount, pursuant to which orders have been passed by the Company Law Board on 01.12.1998 directing the directors at the relevant point of time and concerned officers to file an affidavit of undertaking to keep up the repayment schedule with a copy to the General Manager, Reserve Bank of India, Department of Non-

Banking Supervision, Chennai. In paragraph 11 of the aforesaid order, the manner of repayment of all the deposits has been set out. In Paragraph 14, it is specifically ordered by the Company Law Board that the Company including the Directors of the Company shall be jointly and severally responsible for due compliance of the said order. Finally in paragraph 15 it is stated that failure to comply with the order on the part of the Company or its officers or Directors shall attract penal provisions contained in sub-section (4AAA) of Section 58B of the Reserve Bank of India Act, 1934, as amended by the Reserve Bank of India (Amendment Act), 1997. It was also directed that the company should file an affidavit of compliance with the order.

3. Though the order was passed on 01.12.1998, it appears that the directions given in the said order have not been complied with. Therefore, prosecution has been initiated for violating the order for punishment provided under sub-section (4AAA) of Section 58B of the Reserve Bank of India Act, 1934. The present petitioner is arrayed as the 12th accused in the private complaint. The learned counsel appearing for the petitioner mainly submitted that at the time when the order was passed by the Company Law Board, the petitioner was not incharge for the conduct of the business of the company nor was a Director and he was inducted as a Director only on 29.01.2000 and was holding the post till 31.08.2000. Therefore, the order passed by the Company Law Board is not binding on the petitioner. The contention of the learned counsel is that as per Section 58C of the RBI Act, only the person who is incharge and responsible for the conduct of the business of the Company should be prosecuted whereas the present petitioner's role in the company is very limited and therefore, the prosecution initiated against the petitioner is not maintainable. Therefore, for the mere non-compliance of the orders passed by the Company Law Board, the petitioner cannot be prosecuted for the offence punishable under sub-section (4AAA) of Section 58B of the Reserve Bank of India Act, 1934. The learned counsel for the petitioner has also placed reliance on an order passed by this Court dated 20.02.2017 in Crl.R.C.No.533 of 2011.

4. The learned counsel appearing for the respondent submitted that the very order of the Company Law Board makes it clear that any non-compliance or violation of the order will attract the penal provisions. Merely because a person has been inducted as a Director later and he also resigned from the Company, he cannot shirk his responsibility. It cannot be said that he is not liable to be prosecuted. The very object of the Act is to enforce the order by directing all the Directors to repay the deposits. Therefore, merely because one of the Directors was inducted later and resigned, the responsibility cannot be taken away. When the order of the Company Law Board

itself indicates that all the Directors are responsible to comply with the order, all the Directors are liable to be prosecuted and hence, opposed for quashing the present proceedings.

5. As indicated above, the private complaint itself filed for violation of the orders of the Company Law Board passed on 01.12.1998. The order has been passed pursuant to the default committed by the Company in repaying the amount to various depositors totalling more than Rs.20 crores at the relevant point of time. Therefore, the Company Law Board has passed an order directing the Company and its Directors to repay to the depositors by stipulating time limits and mode of payments to various depositors. Paragraphs 14 and 15 of the order of the Company Law Board make it clear that in the event of failure to pay the deposit back to the depositors, the Company and its Directors are liable to be prosecuted for violation as per law i.e., under the Reserve Bank of India Act, 1934. Though it is emphasized that the present petitioner was inducted as a Director only on 29.01.2000 much after the order passed by the Company Law Board, it is to be noted that once the person is inducted as a Director, he not only takes the responsibility of the company, but also has the responsibility to honour the orders already staring at the company. When there is a direction to the company to refund all the deposits received by the company, the responsibility is equally on all the Directors to see that the orders of the Company Law Board is properly complied. Therefore, one cannot take advantage of mere resignation from the Directorship at the relevant point of time to contend that he was not responsible to the affairs of the Company. Therefore, at this stage, this Court is of the view that the contention of the learned counsel cannot be countenanced. Whether or not the petitioner was incharge and responsible to the conduct of the business of the company or whether or not he has purposely resigned to avoid the directions of the Company Law Board is a matter of evidence. Therefore, at this stage, this Court is not inclined to quash the proceedings. It is also relevant to note that similar stand has been taken by some of the co-accused wherein they pleaded discharge, which was dismissed by the trial Court and the revision filed against the said order in Crl.R.C.No.533 of 2011 has also been dismissed by this Court vide order dated 20.02.2017 holding that there are prima facie materials to proceed against the petitioners who are arrayed as Accused 2, 4 and 5 in the private complaint.

6. In such view of the matter, this Court holds that there is prima facie material to proceed against this petitioner also and the present Criminal Original Petition is liable to be dismissed.

7. Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1. The Authorised Officer,
   The Reserve Bank of India,
   Mr.R.Parthasarathy,
   Department of Non Banking Supervision,
   Chennai.

+2cc to Mr.T.Poornam, Advocate, S.R.No.206, 67005

Crl.O.P.No.22951 of 2017 &
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UM(CO)
CT 25/01/2022