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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-662-2020 (O&M)
Reserved on : 22.11.2023
Pronounced on : 22.02.2024

Pardeep Kumar ….Petitioner

Versus

State of Haryana and others ….Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Ms. Anu Garg, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, A.A.G., Haryana.

None for respondent No.2.

Mr. Ashish Jhamb, Advocate
for respondent No.3.

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PANKAJ JAIN, J.

Complainant is in revision against order dated 29.01.2020 passed by Additional Sessions Judge, Bhiwani, whereby the trial committed to the said Court has been transferred back to the Illaqa Magistrate under Section 228 of the Code holding that offence under Section 3(2) of the Haryana Protection of Interest of Depositors in Financial Establishment Act, 2013 (*hereinafter referred to as '2013 Act'*) is not made out.

2. FIR No.0119 dated 14.06.2016 was registered under Sections 120-B, 420, 506 IPC and Section 3(2) of 2013 Act on the information supplied by petitioner alleging that accused Vedpal and Rohtash induced

him to invest money in the society named as Devsaria Financial Services Pvt. Ltd. with the promise that he will be paid interest @ 24% per annum. Believing the same the petitioner deposited Rs.3,35,000/- on 16.04.2015 and Rs.20,000/- on 25.06.2015. When the petitioner demanded money back, he was refused the refund.

2.1. Police report was filed. An application was moved under Sections 323/209 of the Code by the prosecution for offence under Section 3(2) of 2013 Act being exclusively triable by the Court of Session so that trial needs to be committed to the Sessions Court.

2.2. At the time of framing of charge, the Additional Sessions Judge, Bhiwani vide impugned order held that no *prima-facie* case for offence under Section 3(2) of 2013 Act is made out and ordered that the case be transferred back to the Court of Illaqa Magistrate.

3. Assailing the impugned order, counsel for petitioner has argued that financial establishment has been defined under Section 2(d) of 2013 Act which includes individual. Thus, even if it is taken for the sake of arguments that the amount was deposited with the accused, the same shall attract offence as punishable under Section 3(2) of 2013 Act. Therefore, the Sessions Court erred in transferring the trial back holding that offence under Section 3(2) of 2013 Act is not made out.

4. *Per contra*, counsel for respondent No.3/accused has submitted that 2013 Act regulates relation between depositors and financial establishments. In the present case, the allegation against the accused persons is that they lured the petitioner/complainant to invest money in a

financial society. Whereas, in fact the same was never deposited in the society. Thus, no offence punishable under Section 3(2) of 2013 Act is made out and therefore the impugned order passed by the Sessions Court is perfect and in accordance with law.

5. I have heard counsel for the parties and have gone through records of the case.

6. In order to appreciate the contention raised by rival parties, it needs to be noticed that the allegation levelled in the FIR is that an advertisement was got published by accused persons in the newspaper that 24% interest per annum shall be given on deposited amount in Devsaria Financial Services Pvt. Ltd. During the course of investigation the investigating agency seized documents issued by the company-Devsaria Financial Services Pvt. Ltd. While presenting police report the offence under Section 3(2) of 2013 Act was added. The offence punishable under Section 3(2) of 2013 Act is exclusively tried by Sessions Court. The trial was committed accordingly.

7. Sections 2(d) and 3(2) of 2013 Act read as under:-

> *"2(d) "financial establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 or limited liability partnership registered under the Limited Liability Partnership Act, 2008 accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a cooperative society owned or controlled by any State Government or the Central Government or a banking company*

> *as defined under clause (c) of section 5 of the Banking Regulation Act, 1949 ;*
>
> *xxxx xxxx xxxx*
>
> *3(2). If any financial establishment defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fails to render service as assured against the deposit, 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 of such financial establishment shall be punished with imprisonment for a term which may extend upto seven years and with fine upto two lakh rupees. Such financial establishment shall also be liable for a fine which shall not be less than five lakh rupees or where such deposit is quantifiable in terms of money twice the defrauded amount whichever is more: Provided that in the absence of special and adequate reasons recorded, the imprisonment shall not be less than three years with fine which shall not be less than fifty thousand rupees as against each individual and not less than two lakh rupees against such financial establishment."*

8. The Courts at the time of framing of charge have to see whether *prima facie* offence is made out or not. It has come on record that accused issued receipts and certificates of deposits in the name of company - Devsaria Financial Services Pvt. Ltd. to the petitioner. The Sessions Court while passing the impugned order has merely relied upon disclosure made by accused Vedpal to the extent that he prepared forged fixed deposit certificate in the name of Devsaria Financial Services Pvt. Ltd. and held that since no amount was deposited in the society, the offence under Section 3(2) of 2013 Act is not made out.

9. In the considered opinion of this Court, the approach of the Additional Sessions Judge is erroneous in law which has led to grave error in the impugned order. The Court has totally misdirected itself in ascertaining as to whether *prima-facie* offence punishable under Section 3(2) of 2013 Act is made out or not. The receipts have been issued in the name of Devsaria Financial Services Pvt. Ltd. against the deposits made by the petitioner. Whether the receipts were forged or fabricated is yet to be ascertained during the course of trial and thus there was no reason for the Court to return the finding that no offence under Section 3(2) of 2013 Act is made out merely by relying upon disclosure statement made by the accused.

10. In view of above, this Court finds that the impugned order dated 29.01.2020 needs to be quashed. Ordered accordingly.

11. Parties are directed to appear before the concerned Court of Additional Sessions Judge, Bhiwani on 04.04.2024.

12. Keeping in view that FIR is of the year 2016, this Court is quite sanguine that the Trial Court shall conclude the trial expeditiously in accordance with law.

13. Petition stands allowed.

14. Pending application(s), if any, shall also stand disposed of.

(PANKAJ JAIN)
JUDGE

February 22, 2024
ashish

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No