Marykutty Daniel and Another Vs. State of Kerala represented by The Public Prosecutor and Others

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Court : Kerala

Decided On : Sep-25-2015

Judge : Alexander Thomas

Appeal No. : Crl. MC. No. 2867 of 2015

Appellant : Marykutty Daniel and Another

Respondent : State of Kerala represented by The Public Prosecutor and Others

Judgement :

1. The prayer in this Criminal Miscellaneous Case instituted under Sec. 482 of the Code of Criminal Procedure seeking invocation of the inherent powers conferred on this Court as per that provision, is for an order from this Court to quash the impugned Annexure-A1 FIR in Crime No.1139/2014 of Konni Police Station, Pathanamthitta District. The impugned crime has been registered against the petitioners for offences punishable under Sec. 3(2) r/w Secs. 17 and 18 of the Kerala Money Lenders Act 1958 and Sec.45S of the Reserve Bank of India Act 1934. The crime has been registered on the basis of Annexure-A1(a) letter dated 15/05/2012 sent by the Deputy General Manager of Reserve Bank of India to the Director General of Police, Economic Offences Wing, Police Head Quarters, Thiruvananthauram. It has been intimated in the said letter that the partnership firm called Pathanamthitta Popular Finance owned by the petitioners has been

engaged in financial activities such as extending gold loans, Foreign Exchange etc. and that public funds are being collected in the name of Popular Traders a sister concern of the aforestated M/s.Popular Finance, which is in contravention of Sec. 45S of the RBI and accordingly, the Deputy General Manager of the RBI had requested the State police authorities to take appropriate action in that matter. Likewise, Annexure-A2(b) letter dated 16/07/2012 was also addressed by the Deputy General Manager of Reserve Bank of India to the Commissioner of Commercial Taxes, Govt.of Kerala, Thiruvananthapuram. It is also on the same lines as in the aforestated letter dated 15/05/2012. The Commissioner of Commercial Taxes, Government of Kerala acted on the said intimation given by the Reserve Bank of India and has duly instituted a complaint before the Chief Judicial Magistrate's Court, Pathanamthitta against the petitioners herein and three others under Section 58B (5A) of the RBI Act for the alleged offence under Section 45S of the RBI Act. It is pointed out that the learned Magistrate has taken cognizance of the said offence and the case has been numbered as Summary Trial Case, S.T.No.416/2013 on the file of the Chief Judicial Magistrate Court, Pathanamthitta and that the matter is posted for framing of charges against the accused therein etc.

2. The sheet anchor of the contentions raised by the petitioners in this case is that on the same set of facts, a complaint as envisaged in terms of Section 58B(5A) of the RBI Act has already been duly instituted before the Chief Judicial Magistrate's Court as evident from Annexure-A2/Annexure-A2(a) and therefore the impugned criminal proceedings in Annexure-A1 Crime No. 1139/2014 of Konni Police Station for the same set of facts is clearly not maintainable etc. The main contentions raised by the petitioners are as follows:

1. There is a legal bar under law for the Magistrate to take cognizance of an offence under Section 45-S of the Reserve Bank of India on the basis of a police report.

2. The provisions of Section 45-S has not been violated by the petitioners. Even if it is accepted that the firm Popular Traders has accepted deposits, the firm will not come within the ambit of the Reserve Bank of India Act for the reason that the said

firm is not engaged in any financial activities as described in Section 45-I(c) of the said Act.

3. Section 3(2) r/w Sections 17and18 of the Kerala Money Lenders Act, 1958 are not attracted on the face of the record. Section 3(2) of the Kerala Money Lenders Act pertains to a bar on a person, firm or joint family or unincorporated association of individuals from carrying on business as money-lender without obtaining a licence under the said Act. Section 17 and 18 deals with penalties for such breach or contravention. The police do not have a case that the petitioners are conducting illegal money lending business without obtaining a license under the said Act. The provisions of the said Act has been incorporated only to harass the petitioners and to book them in a non-bailable offence.

4. On the very same set of facts, already the Inspecting Assistant Commissioner, Commercial Taxes, has instituted a criminal complaint. As such, the proceedings pursuant to Annexure A1 will only be a futile exercise, an abuse of the process of the court and waste of valuable time of the court and shear harassment of the petitioners. Even though the law does not prevent simultaneous trials for the very same offences, this Hon'ble Court cannot be oblivious of the fact that the petitioners are most likely to face double jeopardy .

3. This Court by order dated 21/05/2015 had directed the learned Public Prosecutor concerned to get instructions and also to get specific clarifications as to whether the factual transactions in the impugned Annexure-A2(a) complaint which has led to the institution of S.T.No.416/2013 on the files of Chief Judicial Magistrate's Court, Pathanamthitta, are the same as those related to the offences under the impugned Annexure-A1 FIR in Crime No.1139/2014 of Konni Police Station. Accordingly, the learned Additional Director General of Prosecutions has filed a statement dated 16/06/2015 of the investigating officer in this case (Deputy Superintendent of Police, Special Team, Crime Branch-CID STATS, Thiruvananthapuram). In the said statement it has been averred that as per the information disclosed in the Annexure-A1(a) letter dated 15/05/2012 sent by the Deputy General Manager, Reserve bank of India to the Director General of Police, Crime Branch, it has been stated that M/s. Popular Finance, Smt.Marykutty Daniel,

as its Chairperson and Sri.Roy Daniel, as its Managing Director has been engaged in financial activities such as extending gold loans, foreign exchange activities, exports etc. through their branches as observed from the advertisements given by the firm in the print and visual media and that they are also collecting public funds as term loan in the name of M/s.Popular Traders, which is a sister concern of M/s.Popular Finance, through their branches all over India which have been utilised by M/s. Popular Finance for granting gold loans to the public and it is in violation of Section 45S of the Reserve Bank of India Act, 1934. An enquiry was duly conducted through a Deputy Superintendent of Police, Economic Offences Wing-I of the State Crime Branch CID, which reveals that even though Popular Finance and Popular Traders are partnership firms and Popular Finance has obtained only Money Lending licence from the Commercial Taxes Department, Government of Kerala, under the Kerala Money Lenders Act, Section 45S of the RBI Act 1934 does not permit any individual firm or unincorporated association of individuals to collect deposits, other than by way of loans from relatives (in the case of individual) or by way of loans from the relative or relatives of any of the partner (in the case of partnership firm). That thus collection of public funds by M/s.Popular Traders is in violation of 45S of the RBI Act and that the activities of M/s.Popular Finance and M/s. Popular Traders are akin to those conducted by a Non-Banking Financial Company which requires registration under the RBI Act 1934 and that neither Popular Finance nor Popular Traders is registered with RBI as a Non Banking Finance Company (NBFC). It is based on these findings in the enquiry and as well as the report of the Deputy General Manager, RBI, that the State Police Chief has given instructions to the Superintendent of Police, Pathanamthitta to register a crime in the matter and conduct investigation thereon, as per letter dated 30/09/2014. It is accordingly that the impugned Annexure-A1 crime No.1139/2014 of Konni Police Station has been registered for offences under Secs. 3(2) r/w Secs. 17 and 18 of the Kerala Money Lenders Act and Sec. 45S of the RBI Act 1934. That during preliminary investigation conducted by the Sub Inspector of Police, Konni, it has been revealed that Popular Finance has 269 branches all over India along with its sister concern Popular Traders and had collected crores of rupees from thousands of depositors. Later, as per order dated 20/03/2015, the State Police Chief has issued orders to transfer this case to

CBCID and vide consequential order dated 06/04/2015 of Additional DG of Police (Crimes), the investigation of the crime has been entrusted with Special Investigation Team consisting of one Deputy Superintendent of Police, two Detective Inspectors, three Detective Sub Inspectors, and one Senior Civil Police officer under the direct supervision of Superintendent of Police, Economic Offence Wing-1, Crime Branch CID, Kollam. That the investigation conducted by the Special Team for the Crime Branch is going on and is in a preliminary stage.

4. It is admitted in paragraphs 11 and 12 of said statement filed on behalf of the respondents that the impugned Annexure-A1 crime was registered essentially on the basis of the information conveyed in Annexure-A1(a) letter dated 15/05/2012 of the Deputy General Manager, Reserve Bank of India. That based on a similar letter sent by the official of the RBI to the Commissioner of Commercial Taxes, Government of Kerala, an enquiry was duly conducted by the Commercial Taxes Department through the Inspecting Assistant Commissioner Commercial Taxes, Pathanamthitta and after completing all formalities in that regard, a complaint for the offence under Section 45S of the RBI Act, has duly been instituted as per Annexure-A2, by taking recourse to the provisions contained under Sec.58B (5A) of the RBI Act. This complaint has been duly instituted as envisaged under Sec.58B (5A) of the RBI Act, before the Chief Judicial Magistrate's Court, Pathanamthitta which has already taken cognizance of the said complaint and numbered as ST No.416/2013 and the case is posted for framing of charge against the accused.

5. Very crucially it has been admitted in paragraph 13 of such statement that the Inspecting Assistant Commissioner, Commercial Taxes, Pathanamthitta has acted on the very same set of facts before the CJM, Pathanamthitta by instituting the aforestated complaint for the offence under Section 45 S of the RBI Act. But that what remains is the violation of the Money Lenders Act in respect of which the Police is fully competent to register a crime and conduct investigation, and that the Police is conducting investigation in the impugned crime etc. It is contended in paragraph 14 of the said statement that since the Money Lenders Act is included in the impugned FIR, the State Police is having the right to investigate into that crime in spite of Section 45 S of the RBI Act and its penal provisions. That the

police authorities are duly authorised under Annexure-R3(a) Notification for making application for taking necessary action in the matter of search and seizure. That in this case, search has been duly conducted within the premises of the accused establishment as evident from Annexure-R3 (b) and that after scrutinising the seized documents, it has been clearly revealed to the police that Popular Traders which is the sister firm of Popular Finance is actually collecting money without any licence from the Kerala Money Lenders Act and that these accused are partners of both the firms. That the offences under Money Lenders Act and RBI Act are the distinct offences and the ingredients are also distinct and that there is no impediment for registration of crime and investigating the offences under the Kerala Money Lenders Act. In that aspect of the matter, Sri.Tom Jose Padinjarekkara, the learned Additional DG of Prosecutions has placed reliance on the decisions of this Court in Abdul Khader and Others v. State of Kerala and Another reported in 2015 (1)KHC 285. In the said case, the competent authorities under the Food Safety Act had instituted a complaint proceedings for sale of adulterated food and the police had registered a crime for offences under the Food Safety and Standards Act. This Court held that where the ingredients of the offences under the Food Safety and Standards Act, 2006 and that under the Indian Penal Code are distinct and different, then there is no impediment for registration of crime and investigation of the offences under the IPC by the Police. He has also placed reliance on the decision of the Apex Court in the case Sangeetaben Mahendrabhai Patel v. State of Gujarat and Another reported in AIR 2012 SC 2844= 2012 KHC 4326 wherein it has been held that since the ingredients of the offence under Sec. 138 of the Negotiable Instruments Act and that under Sec.420 of the IPC are distinct, there is no bar on the police from investigating the crime for the offence under Sec.420 of the IPC which is in respect of a transaction for which separate complaint under Section 138 of the N.I.Act has already been instituted.

6. Heard Sri.P.Vijayabhanu, learned Senior Counsel instructed by Sri.K.Shaj learned counsel appearing for the petitioners and Sri.Tom Jose Padinjarekkara, learned Additional DG of Prosecutions and Additional State Prosecutor appearing for the respondent State of Kerala.

7. It is now indisputable case that the factual transaction in respect of offence under Section 45S of the RBI Act included in the impugned Annexure -AI FIR registered by the State Police are the same as the one in Annexure-A2 complaint filed for the offence under Section 45S of the RBI Act.

8. The mandatory provisions contained in Sec.58E of the RBI Act deal with cognizance of offences, provides as follows:

58 E- Cognizance of offences- (1) No court shall take cognizance of any offence punishable under this Act except upon a complaint in writing made by an officer of the Bank, generally or specially authorised in writing in his behalf by the Bank, and no court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class or a court superior thereto shall try any such offence:

Provided that in respect of any offence punishable under sub- section 5(A) of Section 58B, a complaint in writing may also be made by an officer of the State Government, generally or specially authorised in writing in this behalf by that Government.

Sec.58 B (5A) provides as follows:

If any person contravenes any provision of Section 45S, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of deposit received by such person in contravention of that section, or two thousand rupees, whichever is more or with both:

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Section 45S of the RBI Act reads as follows:

"45S. Deposits not to be accepted in certain cases.-(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit-

(i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I;

or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner or lending in any manner:

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in sub-section (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier:

Provided that if the Bank is satisfied on an application made by any person to the Bank that such person is unable to repay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

(3) On and from the date of 1st day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

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9. Therefore it is evident from these provisions of the RBI Act that no court can take cognizance of the offence under Section 45S of the RBI Act except on a complaint in writing made by the authorised officer concerned. Since action in that regard has already been duly taken as evident from Annexure-A2 complaint which has led to S.T.416/2013 on the file of the CJM's court, Pathanamthitta, further action in that regard for the very same offence under Section 45 S of the RBI Act proposed to be taken in the impugned Annexure-I FIR is no longer legally tenable or sustainable. On that limited ground alone, the offence of Section 45 S of the RBI Act included in the impugned Annexure -A1 FIR in crime No.1139/2014 of

Konni Police Station is liable to be quashed and accordingly the same stands quashed.

10. However, the issue as to whether the offences under the Kerala Money Lenders Act which are included in the impugned Annexure-A1 FIR is maintainable or not in the facts and circumstances of this case, is a not a matter which is to be adjudicated and evaluated by this Court at this stage of the matter, as the matter is only at the preliminary stage of the investigation by the State Crime Branch police authorities. The learned counsel appearing for the petitioners would vehemently contend that it is admitted case of the respondents that M/s. Popular Finance has secured valid licence under the Kerala Money Lenders Act and further that the only allegation raised by the police against M/s.Popular Traders is that they are collecting deposits from the public and that there are no allegations that M/s.Popular Traders are in any way concerned with the main or subsidiary occupation and business of advancing or realisation of loans and therefore, none of the offences under the Kerala Money Lenders Act would lie as against M/s. Popular Traders and its partners etc. This contention is made by the learned counsel for the petitioner primarily with reference to the provisions contained under Section 2 (7) of the Kerala Money Lenders Act which defines a money lender as to mean a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the course of such business etc. Therefore it is contended that the mere act of acceptance of deposits by a person who is not having an authorised licence under the Kerala Money Lenders Act, by itself will not rope it in the definition of Money Lender as envisaged under Section 2(7) unless and until it can be conclusively established that such a person who is accepting deposits is also involved in the course of the business of advancing and realizing loans and since there are no allegations that M/s.Popular Traders is in any way involved in the business of advancing and realizing loans, the allegation that they are accepting deposits by itself will not make them liable for any of the offences under the Kerala Money Lenders Act. After having given anxious consideration of the rival pleas in this regard, this Court is of the considered opinion that the issue as to whether the accused, after accepting deposits are also involved in the business of advancing and realising loans etc. is a matter which can only be factually ascertained only by a proper investigation in the matter.

There could be many other aspects of the matter on which no adjudication or comments are required to be made by this Court. As all those matters are now within the exclusive domain of the investigation, it is for the State Crime Branch authorities to conduct a fair and proper investigation into the matter and conclude the investigation in the manner known to law. The investigation shall be duly monitored and supervised by a senior officer to be nominated by the Additional Director General of Police, Crimes and after the conduct of a fair and proper investigation in the matter, the same shall be concluded strictly in accordance with law. After the conclusion of the investigation and submission of the final report in that regard before the competent criminal court, if the petitioners have any grievances in that regard, it is for them to agitate the same in the manner known to law.

11. Accordingly it is held that the prayer for quashment of the offences included in the impugned Annexure-A1 FIR for the offences under the Kerala Money Lenders Act cannot be granted. But as ordered earlier hereinabove, the offence under Sec.45S of the RBI Act included in the impugned Annexure-A1 FIR stands quashed.

With these observations and directions the Crl.M.C.stands finally disposed of.