

Sunil Shakti Vs. State

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Court : Delhi

Decided On : May-25-2001

Reported in : 2001IVAD(Delhi)982; 92(2001)DLT772; 2001(59)DRJ151

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120 B, 406, 409 and 420

Appeal No. : Crl. M(M) No. 867 of 2001

Appellant : Sunil Shakti

Respondent : State

Advocate for Def. : Ms. Richa Kapur, Adv.

Advocate for Pet/Ap. : Mr. R.K. Anand, Sr. Adv. and; Mr. Vikas Pahwa, Adv

Judgement :

ORDER

S.K. Agarwal. J.

1. This is a petition under section 482 Cr.P.C. for quashing of FIR No.100/97 under section 409 read with section 120B Indian Penal Code, PS Greater Kailash-I and consequential proceedings thereon pending in the court of Sh.K S Mohi, Metropolitan Magistrate, New Delhi.

2. ADMIT. Learned counsel for the petitioner submits that the point involved in the revision petition is very short and the same be heard and disposed of at this stage itself.

3. Prosecution allegations in brief are : that petitioner was the Managing Director of M/s Fintra Systems Limited, a non-banking finance company engaged in para banking and related financial activities. The petitioner, through advertisements, invited deposits from public assuring lucrative returns; carried away by the representations hundreds of investors made deposit. The petitioner issued cheques towards payment of interest and/or return of principal amounts. These cheques were dishonoured. On the basis of a complaint filed by one of the investors alleging embezzlement, misappropriation and siphoning off of the funds, above noted case was registered. During investigations it was found that petitioner in pursuance of a criminal conspiracy received public funds, misappropriated them through personal bank accounts, created non-functional firms like Fintra Resorts Limited, Fintra Agro Forests Limited, Fintra Capital Services Limited and Fintra Securities Limited. None of these companies carried out any constructive business activity and they were in fact used to siphon off the funds collected from the investors. The petitioner's company even did not maintain proper accounts and records of the investors or the invested amounts. Several incriminating documents were recovered and seized by the police during investigations. Challan was filed after investigations were complete against the petitioner and other co-conspirators, inter alia, alleging :-

'He had no proper utilization of crores of rupees taken from innocent and unsuspecting investors after inducing them with handsome safe and regular returns. He misappropriated the funds through his personal bank accounts and the personal bank accounts of his wife Smt. Shilpi Shakti. Further, he created non-functional firms like Fintra Resorts Limited, Fintra Agro-Forests Limited, Fintra Capital Services Limited, Fintra Securities Limited, all having their registered office at 9-D, Masjid Moth, Phase-I, Greater Kailash-II, New Delhi which did not carry out any constructive business activities but were in fact a means to siphon off the funds so collected from the investors. He has not maintained proper accounts of his companies, records of his investors or the investment amounts. He also indulged

in manipulation of prices of shares in the stock exchange in connivance with sub-brakes and manipulated the value of shares of sick companies to give these shares as security/guarantee to the unsuspecting investors against their deposits. Accused Shri Narsh Tyagi mentioned at column 3, is also charged under section 406,409,420 and 120B IPC, being a Director of Fintra Systems Limited and Fintra Centre. He was hand in glove with accused Shri Sunil shakti and aided and abetted and willingly participated in the fraudulent activities of Shri Sunil Shakti in every possible way. He conducted his business from 9-D, Masjid Moth, Phase-I Greater Kailash-I, New Delhi as well as from 306, Namdhari Chambers, Deshbandhu Gupta Road, Karol Bagh, New Delhi, and lured the investors to invest their money with him. He was holding shares of sick companies in his possession for giving as fake security to the investors. Both these accused acted as bankers, Directors of Non-Banking Financial Companies, Brokers, Agents and Custodians of crores of rupees, which they siphoned off intentionally in conspiracy with each other and other accused mentioned at Column 4, through various bank accounts/financial channels and did not intentionally maintain any proper books of accounts nor did they utilize these funds for any useful purposes.'

4. On the basis of the above material charge under section 409 read with section 120B IPC was framed and prosecution evidence is being recorded.

5. I have heard learned counsel for hte petitioner and learned counsel for hte State and have been taken through record.

6. Learned counsel for the petitioner argued that after investors deposited their money the relationship of debtor and creditor or the bank and customer came into existence and not of the trustee and beneficiary, therefore section 409 IPC is not attracted. It was argued that the perusal of the complaint/FIR does not disclose the commission of any offence and, the same is liable to be quashed. It was further argued that assuming the allegations to be true bouncing of the post dated cheques of the petitioner's company at best gave rise to cause of action under Negotiable Instruments Act and the prosecution of the petitioner for penal offences is an abuse of process of law. In support of his submissions reliance was placed on two decisions reported in R P Sablok Vs . Smt. Kaushalya Devi :

21(1982)DLT364 and Miss. Trilochan Banga and another v. Sh. S K Kataria and ors. 1986(1) Cri 11. Learned counsel for the State argued to the contrary.

7. As noticed above, during investigations it was found that crores of rupees taken by the petitioner's company on representation of handsome, safe and regular returns; the same was allegedly misappropriated by the petitioner through his personal bank accounts as well as the accounts of his wife; he created non-functional firms which did not carry out any constructive business activity and were created only to siphon off the funds. The fact that the petitioner did not maintain proper accounts of the companies or kept the records of the investors or the invested amounts itself, prima facie, shows dishonest intention of the petitioner. The ratio of decision cited by learned counsel for the petitioner is not applicable to the facts of the present case. In none of these cases there were allegations of creation of bogus companies and siphoning of funds through personal accounts. This petition appears to be an effort by petitioner for protracting the trial and preventing its conclusion by raising totally unsustainable pleas.

8. In a recent decision reported in Smt. Om Wati & Anr vs. State (2001) 2 LRI 41, the Supreme Court while taking into consideration its earlier decisions holding that all such efforts should be discouraged, observed:-

'We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.'

9. For the foregoing reason, no case for quashing the above noted FIR is made out.

10. Dismissed.