

Rajathi Vs. State

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Court : Chennai

Decided On : Apr-03-2001

Reported in : [2002]108CompCas262(Mad)

Judge : A. Ramamurthi, J.

Acts : Tamil Nadu Protection of Interests of Depositors in Financial Establishment Act, 1997 - Sections 5, 6(3), 13, 13(1) and 13(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 5, 120B, 409 and 420; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 193 and 239

Appeal No. : Criminal Revision Petition No. 1053 of 1999 and Criminal Miscellaneous Petition No. 9475 of 1999

Appellant : Rajathi

Respondent : State

Advocate for Def. : C.N. Kunasekaran, Adv.

Advocate for Pet/Ap. : R. Sreeramulu and ;M. Subramaniam, Adv.

Disposition : Revision petition and misc petition dismissed

Judgement :

A. Ramamurthi, J.

1. Petitioners A4 and A6 in C.C. No. 13 of 1998 on the file of the Special Judge under the Tamil Nadu Protection of Interest of Depositors in Financial Establishments Act, 1997 ('the Act') Chennai, have preferred the revision aggrieved against the orders passed in Crl. M.P. No. 2 of 1999 dated 1-3-1999.

2. The case in brief is as follows :

The petitioners filed a petition under Section 239 of the Code of Criminal Procedure, 1973, to discharge them from the case. Act No. 44 of 1997 came into force with effect from 7-8-1997. The period of commission of offence alleged in the final report is prior to 29-7-1993, and lasted up to 16-12-1996. There cannot be any retrospective effect to the penal law and as such Act No. 44 of 1997 is not applicable to the case of the petitioners. Offences under Section 120B read with Sections 420 and 409 of the Indian Penal Code, could be tried by ordinary criminal courts, while so, trial of such offences by the Special Court will cause prejudice to the accused as if they are aggrieved by the outcome of the trial, they have to go in appeal only to the High Court thereby they will be deprived of a chance of going in appeal to the Sessions Court. Persons who are responsible for the management of the affairs of the financial establishment alone can be proceeded with under Section 5 and these petitioners have dissociated themselves from the firm long back by their retirement and they are not partners during the relevant period.

3. The special public prosecutor opposed the application and contended that the offence under Section 5 seeks to punish non-payment of matured deposits or non-payment of interest. Apart from the allegation of the commission of the said offence they are also charged with further offences under Sections 120B, 420 and 409 of the Indian Penal Code, prior to the two categories of offences against them which arose out of the same transaction spread over a period. This court being a Sessions Court having criminal jurisdiction has got the power to try several offences arising out of such transaction. The grievance of the petitioners that they would be losing a chance of an appeal before the Sessions Court is irrelevant. All the accused have conspired together to commit these white collar offences. There are allegations of unlawful understanding to receive deposits from the public to cheat them and there are allegations as to their participation in the commission of

offences and there is nothing to indicate their disaffiliation from the firm by retirement. The decisions cited are inapplicable to the case on hand.

4. After hearing the parties, the learned judge, dismissed the application and aggrieved against this, the present revision is filed.

5. Heard learned counsel for the parties.

6. The points that arise for consideration are :

(i) whether Act No. 44 of 1997 can be made applicable to the case of the petitioners ?

(ii) whether the order passed by the court below is proper and correct ?

Points :

The petitioners are A4 and A6 in C.C. No. 13 of 1998 on the file of the trial court. They along with the other accused have been charge-sheeted for the offence under sections 120B, 409 and 420 of the Indian Penal Code and also under Section 5. According to the charge-sheet, prior to 29-7-1993, at Chennai, A1 to A11 have entered into a criminal conspiracy with a view to cheat the public by starting companies in different names and to collect huge monies from the public by dishonestly inducing them to part with money by way of deposit. Between 29-7-1993 and 16-12-1996, they have induced the public by announcing various savings schemes such as fixed deposit, cumulative deposit, recurring deposit and made the public to deposit the money by announcing high rate of interest of payment for the deposit. In addition they have announced advertisement through pamphlets offering them interest at 24 per cent and also incentive of 9 per cent. They have dishonestly induced the public to deposit their hard earned money in various schemes and in various places in Chennai, and they have started various groups of companies numbering about eight in number. They have totally collected more than Rs. 1,74,00,000 from 675 deposits. After collecting the money, all the accused closed the business and absconded. They have also misused the same to lavishly decorate the office and to purchase properties, etc. In the course of investigation, after the Act 44 of 1997 came into force, it was found that the

accused have not returned the matured deposit with interest for 144 depositors amounting to Rs. 12,74,901 and it was also found that they have not paid interest to 144 depositors. Thus, they have committed an offence punishable under Section 5.

7. The learned senior counsel for the revision petitioners contended that Act 44 of 1997 came into force on 7-8-1997, whereas the period of offence was prior to 29-7-1993, and as such they cannot be charged for the offence under Section 5. If that is so, then the petitioners can be tried by a regular criminal court and there is no necessity for them to face the trial before the Sessions Court and first petitioner being a doctor and the second petitioner being a housewife had retired from the partnership, they cannot be made liable for the offences. Even as per Section 5 the persons who are responsible for the management alone are liable to be prosecuted. There is no nexus to implicate them in the alleged offences. The learned Special Judge erred in calling in aid the provisions of Section 13(1). Hence, the application filed by the petitioners ought to have been allowed and they should have been discharged from the case. The learned senior counsel for the petitioners mainly contended that framing of charge under Section 5 is not proper and correct and Act 44 of 1997 is not applicable to the case of the petitioners since even, according to the prosecution case, the commission of the offence took place prior to the coming into force of the said Act. The learned counsel also relied upon Article 20(1) of the Constitution in support of his contention. In short, the Special Court cannot take cognizance of the offence without committal as envisaged under Section 193 of the Code of Criminal Procedure. The other offences are triable by a First Class Magistrate and if so, ultimately the petitioners will have the right of appeal to the Sessions Court and the right of revision to this Court will be available. The memorandum of understanding reached between the management and the registered association of the creditors also has not been considered. In a similar case, this Court passed an order directing the matter to be transferred from the Special Court to the Metropolitan Magistrate Court in CrI. R.C. No. 1412 of 1999 dated 10-3-2000. Hence, according to them, the Special Court is not having jurisdiction and the matter should be sent back to the concerned Metropolitan Magistrate Court at Saidapet, to be tried and decided in accordance with law. There are no allegations in the charge-sheet to show that they have entered into

conspiracy or committed offences of cheating and breach of trust.

8. The learned senior counsel for the revision petitioners relied on Rao Shri Bahadur Singh v. State of Vindhya Pradesh : R.S. Kalakpur v. State of Karnataka and Soni Devrajbhai Babubhai v. State of Gujarat : and these decisions are not applicable to the case on hand. Article 20(1) reads as follows :

'Protection in respect of conviction for offences.--(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.'

9. One of the cases relied upon by the learned counsel relates to an offence under Section 304B of the Indian Penal Code, and as the occurrence took place prior to the introduction of Section 304B, it was not made applicable. Similarly, the other case relied upon by them relates to Section 7 of the Prevention of Corruption Act. The occurrence also took place under the old Act and as such it was held that it was not applicable.

10. There is no dispute that the Act came into force on 7-8-1997. This Act was passed to protect the deposits made by the public in the financial establishments and matters relating thereto. Section 5 reads as follows :

'Default in repayment of deposits and interests honouring the commitment.-- Notwithstanding anything contained in Chapter II, where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit, every person responsible for the management of the affairs of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh of rupees and such financial establishment is also liable for fine which may extend to one lakh of rupees.'

11. Section 6(1) relates to Special Court; for the purposes of this Act, the Government may with the concurrence of the Chief Justice of the High Court, by

notification, constitute a Special Court in the cadre of a District and Sessions Judge.

12. According to Sub-section (3), any pending case in any other court to which the provisions of the Act apply shall stand transferred to the Special Court.

13. Section 13(1) relates to procedure and powers of the Special Court regarding offences. The Special Court may take cognizance of the offence without the accused being committed to it for trial and in trying the accused person, shall, follow the procedure prescribed in the Code of Criminal Procedure, for the trial of warrant cases by magistrates. The provisions of the Code of Criminal Procedure, shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions a Special Court shall be deemed to be a magistrate.

14. In view of the language employed under Section 13(1) and (2) I am of the view that there is no force in the contention of the learned senior counsel for the petitioners that the Special Court is incompetent to try the case without committal.

15. The main contention put forward by the learned senior counsel for the revision petitioners is that when the Act came into force on 7-8-1997, and the alleged offence took place earlier in point of time, the Act will not have any retrospective effect and as such, the charge under Section 5 by the court below is not proper and correct. The petitioners have been charged with the other offences under the Indian Penal Code and they are triable by the First Class Magistrate and as such the case has to be transferred to be tried by the other First Class Magistrate and not before the Special Court. It is not in dispute that after hearing the parties, the learned judge framed charges against the petitioners for the offences under sections of Indian Penal Code as well as Section 5. The question that has to be considered now is whether the Act is applicable to the case of the petitioners or not. The learned senior counsel for the petitioners relying upon the averments in the charge-sheet contended that the entire deposit was made by 144 deposit holders earlier in point of time, i.e., prior to 7-8-1997, and as such this Act is not applicable. It has to be borne in mind that depositing of a particular amount with a financial institution is not an offence committed by any deposit holders. Only if the

deposit amount is not returned on the matured date or if the financial company failed to pay the interest on the due date, then alone Section 5 is attracted. Now, the period mentioned in the charge-sheet is only the period of deposit made by the deposit holders. Although 675 deposits have been collected by the financial company, yet the charge-sheet has been laid only in respect of 144 deposit holders because their amount of principal as well as interest matured only after 7-8-1997, and admittedly, the petitioners and other accused have failed to make repayment. A plain reading of Section 5 itself clearly indicates that where any financial establishment defaults in the return of the deposit or defaults in the payment of interest on the deposit, every person responsible for the management of the affairs of the financial establishment shall be punished. The question whether these petitioners were responsible for the management of the affairs of the establishment is a matter that can be decided only at the time of trial since the decision can be taken only on legal evidence. Similarly, the cause of action for the commission of the offence would commence only when the default was made by the company on the non-payment of the matured deposit and also on non-payment of interest towards the deposit. All these things took place only after 7-8-1997, have not been disputed by the learned senior counsel for the revision petitioners. Under the circumstances, the period of deposit mentioned in the charge-sheet has no relevance to consider the applicability of Section 5, and only when the establishment failed to return the deposit or defaulted in payment of interest, then alone Section 5 is attracted and, accordingly, in this case also, it has been properly framed and there is no reason to take a different view. On the other hand, the cases cited by the learned senior counsel for petitioners clearly indicate that the offences took place earlier in point of time and as such, the amended provision cannot be made applicable. This Act has been introduced only to benefit the deposit holders because these finance companies have lured the public to deposit by giving false promises. Hence, I am of the view that although the reasoning given by the court below may not be proper and correct one, yet considering the fact that the charge-sheet has been laid only in respect of 144 deposit holders, as the principal and interest became due after the commencement of the Act and as the amount was not paid, there is no reason to take a different view and, hence, the points are answered accordingly.

16. For the reasons stated above, the revision fails and is dismissed. Consequently, the connected criminal miscellaneous petition is also dismissed.

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