

**Adhilakshmi Vs. State**

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**Court :** Chennai

**Decided On :** Jan-04-2001

**Reported in :** 2001(2)ALT(Cri)371; [2003]115CompCas417(Mad); 2001CriLJ3524

**Judge :** Malai Subramanian, J.

**Acts :** Tamil Nadu Protection of Interests of Depositors Act, 1997 - Sections 7

**Appeal No. :** Crl. O.P. Nos. 1850 and 8514 of 2000 and Crl. M.P. Nos. 2712 and 3679 of 2000

**Appellant :** Adhilakshmi

**Respondent :** State

**Advocate for Def. :** Babu Muthu Meeran, Adv.

**Advocate for Pet/Ap. :** P.C. Narayanan, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Malai Subramanian, J.**

1. Accused No. 2 in C. C. No. 3120 of 1998 seeks to quash the proceedings pending against her by way of Crl. O. P. No. 1850 of 2000. The very same person, who is figuring as accused No. 20 in C. C. No. 2 of 2000 on the file of the TNPID

Court, High Court Buildings, Chennai, seeks to quash the proceedings pending against her in the above said case by way of Crl. O. P. No. 8514 of 2000. Since the petitioner and respondent are one and the same and the points involved are also one and the same/ common order is passed in both the O.Ps.

2. The Central Crime Branch, Chennai, registered a case in Crime No. 327 of 1997 for offences under Sections 420 and 506 of the Indian Penal Code, 1860, on the complaint given by one Lalitha and investigation started resulting in laying of final report before two courts ; one before the XI Metropolitan Magistrate, Saidapet, Chennai and the other before the Special Court trying cases under the TNPID Act. The petitioner, who figures as A2 in the case before the XI Metropolitan Magistrate, Saidapet, also figures as A20 in the case before the Special Court. After the first information report by the said Lalitha, some of the depositors also filed individual reports and all the reports were clubbed together by the investigating agency and it investigated into the alleged offences committed by the accused including this petitioner. Learned counsel submits that insofar as the case pending before the Special Court is concerned, Section 5 of the Tamil Nadu Protection of Interests of Depositors Act states that every person in the management of the affairs of the financial establishment shall be punished and merely because she is the wife of A1 in one case and A19 in the other cases, she has been roped in and that she was not at all responsible for the management of the affairs of the financial establishment. The learned Government advocate submits that the investigating agency gathered materials to implicate this petitioner also in the commission of the crime, where a lot of depositors were duped by this petitioner and others as well as by the financial establishment concerned. Insofar as this petitioner is concerned according to the learned Government advocate, the statements of several depositors including one V. S. Bhashyam, Dharamalingam, Govindan and Krishna, implicate this petitioner in the crime. Learned counsel appearing for the petitioner submits that the Section 161 statements of these witnesses are inadmissible in evidence and therefore on the strength of the inadmissible evidence, the petitioner cannot be permitted to undergo the agony of facing the trial in the absence of any complicity based on any documentary evidence like participation in advertisements or inviting depositors. He would further say that the first information report does not whisper anything about the

participation of this petitioner.

3. Evidence, during the course of trial in any case need not necessarily be adduced in the form of documentary evidence and the oral evidence is given as much weight as documentary evidence provided the evidence comes from the mouth of the persons, who can be reliable and trustworthy. This is a stage where investigation has been completed and a final report has been lodged, but the trial has not yet started. No doubt, this petitioner has got every right to approach this court under Section 482 and she need not wait for the trial provided there are no materials to believe or hold that she had committed any offence, but if the materials gathered by way of investigation disclose any offence committed by this petitioner, this court cannot interfere at this stage under Section 482 to quash the proceedings. Learned counsel cited several rulings of the apex court as well as High Courts ; the latest being reported in K. Ramakrishna v. State of Bihar : their Lordships have held as follows :

'We have perused all those paras and other parts of the case diary and find that the trial magistrate was not justified in his observations so far as the appellants are concerned. We are conscious of the fact that in the normal circumstances, this court or the High Court while deciding the sufficiency of the evidence would not resort to the perusal of the case diary and sit in appeal over the judgment of the investigating officer but as the trial magistrate is apparently shown to have recorded wrongly with respect to the facts allegedly noticed in the case diary, this court vide order dated July 17, 1998, had no option but to direct counsel of the respondent-State to produce the documents referred to in the report filed under Section 173 of the Code of Criminal Procedure. On perusal of the FIR, the final report under Section 173 of the Code of Criminal Procedure and all other documents accompanying it, we are satisfied that no case is made out against any of the appellants and the pendency of the proceedings against them before the magistrate is an abuse of the process of the court.'

4. It is evident even from the ruling of the apex court that the documents accompanying the final report can be looked into for the purpose of ascertaining as to whether a prima facie case against the appellants was made out so as to

compel the petitioner to face the trial. The statements of witnesses recorded under Section 161 of the Criminal Procedure Code, 1973, are undoubtedly not substantial pieces of evidence for the purpose of basing a conviction in a criminal trial but at the same time, for the purpose of ascertaining whether a prima facie case has been made out against the concerned accused either at the time of framing of charges or to quash the proceedings under Section 482 of the Criminal Procedure Code, 1973, the statements recorded from the witnesses under Section 161 of the Criminal Procedure Code have to be taken into consideration and they are valid documents insofar as this stage is concerned and only during the course of the trial the document loses its importance except for the purpose of contradicting the witnesses who made the earlier statements. Therefore, at this stage, this court has to look into the statements of the witnesses also and while looking into the statements of the above-said four witnesses, it is apparent that it was this accused along with her husband, who was arrayed as A1 and A19 in the above-referred cases who had canvassed for deposits and these witnesses would say that on believing their words only, they have deposited the amount in the financial establishment.

5. Learned counsel appearing for the petitioner relied on a ruling of the Karnataka High Court in *Nina Nargis Devaud v. Farida G. Devacha* [1991] 2 Cri 307 wherein it has been stated that where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible, then the complaint has to be necessarily quashed. That court again relied on a ruling of the apex court given in the case of *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre*, : wherein the apex court had held as follows (headnote) :

'The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.'

6. On this aspect, learned counsel appearing for the petitioner attracts the attention of this court to the divorce proceedings between the petitioner and her husband Velmurugan who is arrayed as A1 and A19 in the respective cases. Page 14 of the typed set contains the petition of this petitioner to the Inspector of Police, Central Crime Branch, wherein, she has stated that she was living separately from her husband from January 5, 1995, whereas the offence was said to have taken place much later ; therefore, she should not be roped in in the crime. Page 10 of the typed set contains the order of the I Additional Family Court, Madras dissolving the marriage by mutual consent between the petitioner and her husband. The order was dated May 25, 1998, whereas the complaint against this petitioner and others is much earlier. Therefore, so far as divorce order is concerned, it cannot be taken as a defence, because it was ordered later. But the point urged by learned counsel is that both in the divorce petition as well as the divorce order, it has been clearly stated that both the husband and wife were living separately from January 5, 1995. According to learned counsel, since, from January 5, 1995, both were living separately, this petitioner could not be roped in, even if any offence is committed by her husband. No doubt, the order reads that due to temperamental incompatibility, the husband and wife are living separately from January 5, 1995. This portion of the order is based on the averment in the petition filed by the petitioner before the Family Court and no evidence has been recorded in the case. It was a case where by mutual consent, the decree of divorce has been granted and it was left to the petitioner to allege any date for separate living in the petition. But what is crucial is that the date of petition as well as the date of order are admittedly subsequent to the initiation of criminal proceedings in this case. Therefore, to escape from the criminal prosecution, there is the possibility of mentioning by collusion between husband and wife an earlier date of separate living. It is purely a matter of defence at the trial to establish that they were living separately from January 5, 1995, by adducing sufficient evidence in the light of the evidence of witnesses, who are depositors, who gave statements to the police during the course of interrogation. Therefore, this fact cannot be considered to be a special feature at this stage to quash the proceedings on the basis of the judgment referred to supra.

7. Learned counsel also relied on a ruling of the Karnataka High Court in *Kihor Lal v. State of Karnataka* [1991] 1 Cri 385 wherein, it has been held that the prosecution must show that the partner of the firm to be prosecuted, was in charge of and was responsible for the conduct of the business of the company. There can be no quarrel over this proposition. Even from Section 5 of the Act, it is very clear that the prosecution is bound to prove that the petitioner was responsible for the business of the company. It is purely, a matter of fact to be decided by the trial court at the time of recording evidence and it is too premature to conclude that this petitioner is not responsible for the management of the affairs of the financial establishment especially where the witnesses had said during investigation that the petitioner canvassed for deposits. Yet another ruling cited by learned counsel is reported in the case of *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, : which would say that in the absence of clear allegation against the manager and directors that they were responsible for conduct of business, prosecution could be quashed. In that case, there was not even a whisper nor a shred of evidence nor anything to show apart from the presumption drawn by the complainant, that there is any act committed by the directors from which a reasonable inference can be drawn that they could also be vicariously liable. It is a judgment rendered under the Prevention of Food Adulteration Act. But in this case, as stated supra, materials were collected during the course of investigation from the depositors who figure as witnesses in this case implicating this accused and the participation of this accused in canvassing the depositors has been alleged by the witnesses during the course of investigation. Therefore, it is not a case where the proceedings can be quashed at this stage. Even that ruling, a ruling of the apex court reported in *Nagawwa (Smt.) v. Veeranna Shivalingappa Konjalgi*, : was relied on, wherein it has been stated that where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused, proceedings can be quashed. Therefore, there is nothing wrong in taking into consideration the statements of witnesses gathered during the course of investigation. Therefore, this ruling is also not applicable to the facts of the present case.

8. Learned counsel took strain to produce another ruling also reported in P. Ravinder Reddy v. NCC Finance [2000] BK 501 ; [2000] 1 BC 332 wherein it has been held by the Andhra Pradesh High Court that there may be ladies and minors who were admitted for the benefit of partnership and they may not know anything about the business of the firm and it would be a travesty of justice to prosecute all partners and ask them to prove under the proviso to Sub-section (1) that the offence was committed without their knowledge. This is the decision given in a case where on the face of the facts, there was no tangible evidence to prove a prima facie case against the accused/petitioner and merely because she was a partner, the apex court held that she cannot be prosecuted at all. But in this case, as stated by the learned Government advocate, the evidence collected during the course of investigation has disclosed the participation of the accused to some extent in the commission of crime. Therefore, it is too early for this court to interfere with the proceedings of the trial court and it is open to the petitioner concerned to contend and raise all these defences during the course of trial.

9. In the result, both the petitions stand dismissed. Any observation made in this case may not prejudice the trial. Consequently, the connected Crl. M. Ps. are also dismissed.

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