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Court : Andhra Pradesh

Decided On : Dec-05-2011

Judge : Samudrala Govindarajulu, J.

Acts : Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 - Section 5, 2(b), 2(b), 2(c); [Indian Penal Code \(IPC\), 1860](#) - Sections 420; [Code of Civil Procedure \(CPC\) , 1908](#) - Order XXI, Rule 37 and Section 51

Appeal No. : CRIMINAL APPEAL No.70 of 2006

Appellant : V. Revathi

Respondent : The State of A.P, Rep. by Public Prosecutor, High Court, Hyderabad

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Judgement :

SAMUDRALA GOVINDARAJULU, J.

JUDGMENT

1) The Appellant/A-1 was convicted by the lower Court (Principal Sessions Court, Kurnool) by judgment dated 18.01.2006 in C.C. No.6 of 2004 under Section 5 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (in short, the 1999 Act) and was sentenced to rigorous imprisonment of one

year and fine of Rs.50,000/- and in default to simple imprisonment of five months. Questioning the same, A-1 filed this appeal. In the lower Court, A-1 and A-2 who are daughter and father, faced trial for charges under Sections 420 I.P.C and Section 5 of the 1999 Act. In the same judgment, the lower Court found A-1 not guilty of the charge under Section 420 I.P.C and A-2 not guilty under both the charges.

2) It is prosecution case that A-1 and A-2 started unauthorised financial establishment in Kothapeta Street of Kurnool town and floated two chits of the values of Rs.1,00,000/- and Rs.50,000/- and collected amounts by way of instalments from the subscribers and failed to pay back the subscription amounts to the depositors who subscribed to those chits. Plea of the accused is one of total denial and not guilty. During trial in the lower Court, the prosecution examined the depositors/subscribers of the chit as P.Ws 1 to 18 and the police officers as P.Ws 19 and 20 and marked Exs.P-1 to P-13; and Exs.D-1 to D-3 were marked on behalf of the accused. After considering the material on record, the lower Court found A-1 alone guilty under Section 5 of the Act and passed the said conviction and sentence against her.

3) In this appeal, senior counsel appearing for the appellant contended that there is no proper and reliable evidence relating to the appellant running private chit fund business and that in any event, running of chit business and any failure on the part of A-1 in her commitments in that chit business do not come within the purview of the 1999 Act in as much as collection of subscriptions in chit transaction does not come under 'deposit' under Section 2(b) of the Act and will not make A-1 a 'financial establishment' as defined under Section 2(c) of the Act. It is further contended that there is specific enactment to deal with running of chits and that therefore any contravention in the chit fund business by any person is governed by only the Andhra Pradesh Chit Funds Act, 1971 and will not attract liability under Section 5 of the 1999 Act.

4) On facts, at this stage, there cannot be much dispute. Evidence of P.Ws 1 to 18 shows that A-1 with the help of her father was running un-registered chit fund business at Kurnool. P.W-1 is a teacher. According to P.W-1, A-1 was doing saree

business, beauty parlour business and chit business. P.W-1 joined as subscriber in the chit of the value of Rs.1,00,000/- payable in 20 equal monthly instalments. She paid 15 monthly instalments to A-1. She is the person who gave Ex.P-1 report to the police. Ex.P-1 contains signatures of P.W-1 and others. She turned hostile to the prosecution. As per Ex.P-1 report, the accused evaded to pay the subscribed amount of the chit. In cross-examination P.W-1 deposed that as per rules under the chit transaction, she is not entitled to get back the instalments paid by her because she committed default after paying 15 instalments. She says that she left out of the transaction believing that she would not get any amounts in view of her default. She says that when she signed in Ex.P-1 in the police station, 20 to 25 persons were present. P.W-2 joined as subscriber in the chit transaction run by A-1 of the value of Rs.50,000/-. P.W-2's daughter Snehalatha also joined as subscriber in the same chit. Out of 20 instalments, 14 instalments were paid by P.W-2 and her daughter respectively. P.W-2 says that A-1 made endorsement in a note book as and when amounts were received. In cross-examination, P.W-2 says that there is no agreement executed either by her or by her daughter with A-1 with regard to chit transactions. In cross-examination she deposed that there were 9 biddings in the chit for 14 months. P.W-3 joined as member in two chits of the value of Rs.50,000/- and Rs.1,00,000/- run by the accused. He paid all 20 instalments in the first chit and 13 instalments in the second chit. He says that A-1 was not found and therefore, he could not demand for repayment of the amounts. He is a retired unit officer in Medical and Health Department. In cross-examination, he admits about not executing any agreements between him and A-1 in connection with those chit transactions. According to him, his daughter was having trust in the accused and made him to join in the chits. None of the subscribers collected any separate receipts from the accused for payment of subscriptions. P.W-4 joined in the chit of the value of Rs.50,000/- and paid 17 instalments. She was successful bidder in the 17th instalment for Rs.42,500/-. In spite of it, A-1 did not pay the prize amount to PW-4 promising to pay the same. She filed Ex.P-3 note book showing details of entries made by A-1 for payments made by her in the chit transaction. She also joined in the second chit of the value of Rs.20,000/-. The relevant entries in both the chits in the note book Ex.P-3 were marked as Exs.P-3A and P-3B respectively. Though she lent another sum of Rs.20,000/- to A-1

under Ex.P-4 pronote, it cannot be subject matter herein, as it is no deposit but loan. In cross-examination she admits that A-1 filed insolvency petition in Court as I.P. No.5 of 2003 and that she received notice in that insolvency petition. She says that A-1 showed the amounts payable to her (P.W-4) in the chit fund transactions and under the pronote in the said insolvency petition. P.W-4 is shown as 37th respondent in the said insolvency petition. P.W-5 is a subscriber in the chit of the value of Rs.1,00,000/- run by A-1. She paid all 20 instalments. But A-1 failed to pay back the amount to P.W-5. P.W-5 is the 5th respondent in I.P. No.5 of 2003 filed by A-1. P.W-6 paid Rs.40,000/- to A-1 under Ex.P-5 pronote. He is shown as 24th respondent in I.P.no.5 of 2003. The transaction relating to Ex. P-5 pronote cannot be subject matter under Section 5 of the Act. P.W-7 turned hostile to the prosecution. P.W-8 also turned hostile to the prosecution. P.W-9 is a subscriber in the chit of the value of Rs.1,00,000/- run by A-1. She paid 14 instalments until A-1 absconded. She did not get back her amounts. She joined another chit of the value of Rs.50,000/- and paid six instalments to A-1 until A-1 absconded. She says that out of confidence, she did not obtain any receipts from A-1 for the payments. In cross-examination she says that A-1 made entries in her note book in respect of the payments made by her. She is a retired teacher. P.W-10 is a lecturer in Government Degree college for women. He joined as subscriber in the chit of the value of Rs.50,000/- and paid 12 instalments to A-1 and could not pay other instalments as A-1 absconded. He also joined another chit of the value of Rs.1,00,000/-. He is shown as 1st respondent in I.P.No. 5 of 2003 filed by A-1. P.W-11 is a staff nurse. She joined in the chit transaction of the value of Rs.50,000/- and paid 6 instalments to A-1 and could not pay further instalments as A-1 absconded. P.W-12 joined as subscriber in the chit of the value of Rs.1,00,000/- and paid 14 instalments to A-1 and thereafter committed default. P.W-13 is working as hostel warden. She joined as subscriber in the chit of A-1 of the value of Rs.1,00,000/- and paid 14 monthly instalments until A-1 absconded from her place. She filed Ex.P-10 note book in which A-1 made entries for payments made by P.W-13 with A-1's signatures. P.W-13 also joined in another chit of the value of Rs.50,000/- and paid 6 instalments to A-1 until she absconded. Entries relating to the 2nd chit are marked as Ex.P-10A in the same note book. P.W-14 is a retired employee. He joined in the chit run by A-1 of the value of

Rs.1,00,000/- and paid 16 instalments until A-1 absconded. He says that A-1 gave receipts for the payments and also made entries in the note book. P.W-15 is a house wife and joined as subscriber in two chits run by A-1 of the values of Rs.50,000/- and Rs.50,000/- and paid 15 monthly instalments until A-1 absconded. According to P.W-15, A-1 executed pronotes towards the amounts payable to her under the chit transactions. Execution of pronotes subsequent to default, may not take away this case from out of the purview of the 1999 Act. P.W-16 joined as subscriber in two chits run by A-1 of the value of Rs.1,00,000/- each and paid 16 instalments in those two chits until A-1 was not found. P.W-16 also became subscriber in the chits run by A-1 previously, but in those previous chits, A-1 fulfilled her commitments. P.W-17 is working as junior assistant in Housing Corporation. He joined as subscriber in the chit of A-1 of the value of Rs.1,00,000/- and paid 15 monthly instalments until A-1 absconded. He says that A-1 made entries relating to payments in Ex.P-11(A) in the note book. She also joined in another chit of the value of Rs.50,000/- and paid 6 instalments to A-1 until A-1 absconded. Ex.P-11B are the entries relating to the second chit in that note book. P.W-18 is L.I.C agent. She joined in the chit run by A-1 of the value of Rs.1,00,000/- and paid 14 instalments. She also joined in another chit of the value of Rs.20,000/- and paid 11 instalments. She made the subscriptions in both the chits until A-1 absconded. She received notice in insolvency petition filed by A-1.

5) P.W-19 is Assistant Sub Inspector of Police in II Town Police Station, Kurnool who arrested A-1 on 27.07.2003 in this case. P.W-20 is the then Inspector of Police, Kurnool II Town Police Station. He received Ex.P-1 report from P.W-1 on 12.07.2003 at about 12.00 noon and registered the same and issued Ex.P-12 F.I.R. He investigated into the offences and filed charge sheet in the lower Court.

6) Evidence of P.Ws 1 to 6 and 9 to 18 and showing many of the said witnesses as respondents in her insolvency petition, there cannot be any doubt or dispute at this stage with regard to factum of A-1 running private chit fund business unauthorisedly in which these witnesses joined as subscribers and ultimately A-1 not paying back the amounts to them in the chit transactions. It is contended for the appellant that A-1 filed insolvency petition No.5 of 2003 in the lower Court disclosing all her financial commitments towards some of the prosecution

witnesses herein and others and claiming necessary reliefs under the Provincial Insolvency Act, 1920 for declaring her as insolvent and ultimately to discharge her from the said liabilities in consequence thereof. Filing of insolvency petition may lead to giving protection to A-1 from civil liability and from civil remedies to which the creditors/subscribers of the chits herein are entitled to. It cannot absolve A-1 from criminal liability in case her activity amounts to commission of any offence by her either under general penal law or under any special enactment like the 1999 Act. The offence under Section 5 of the 1999 Act is committed the moment A-1 committed default in repayment of deposits to the depositors by the due date. Since admittedly no chit agreement was executed in writing between the subscribers and A-1, the subscribers will be entitled to get back their amounts by the due date. Since the subscribers could not pay all the instalments as A-1 absconded, it cannot be said that the subscribers defaulted in their commitments in the chit transactions. Since it was A-1 who committed default in receiving total instalment amounts from the subscribers by running the chits till the end of the respective chit period, A-1 cannot blame the subscribers for not paying total chit instalments.

7) It is contended for the appellant that in a chit transaction the organiser of chit will only rotate collection of subscriptions from the subscribers every month and that the organiser/foreman is entitled only for commission. It is also further contended that bid amount will decide the discounted amount by the prized bidder and the organiser of the chit will distribute the discounted amount as dividend to all the other subscribers. It is therefore contended that in case the subscribers who were successful bidders in previous months and chit received the entire prize amounts after deducting the discounted amounts/bid amounts do not pay future instalments, then the entire chit transaction fails and the organiser will not be able to meet future commitments to those subscribers who are entitled for refund of their subscriptions either at the end of chit period or in the middle, when the chit discontinued due to inability of the organiser to continue the chit any further. In such a situation, it is for the organiser of the chit to take effective steps against those prized subscribers who had withdrawn the prize amount and who later committed default in making payment of further instalments and to recover the amount due from them and to continue the business of running the chit during

further chit period till the transaction terminates and till all the non prized subscribers are paid back their total subscriptions. On the ground that the prized subscribers failed to pay future instalments, A-1 on her part cannot evade to fulfil financial commitments to non prized subscribers from whom she collected subscriptions previously. Non payment of future subscriptions by the prized subscribers, is no answer or defence for the accused for the default committed by the accused to non prized subscribers. Further, the offence under Section 5 of the 1999 Act is committed the moment there was default on the part of A-1 to make repayment of the amount received by her from the chit subscribers. Therefore, A-1's future insolvency proceedings subsequent to her default i.e., subsequent to her failure to make repayment to the chit subscribers will not water down the offence which was already committed by A-1. Successful insolvency proceedings may give protection to the petitioning debtor from arrest in civil execution proceedings under Order XXI, Rule 37 and Section 51 C.P.C and cannot give protection to an offender either from arrest or in criminal proceedings in any criminal Court in pursuance of the provisions of Code of Criminal Procedure, 1973. Therefore, I find that subsequent insolvency proceedings started by the accused in any insolvency Court after the offence under either general penal law or under Section 5 of the 1999 Act was committed, will not come to the rescue of the accused in criminal proceedings.

8) The lower Court came to the conclusion that subscriptions collected by A-1 in the chit fund transactions amount to receiving of 'deposits' by her as defined under Section 2(b) of the 1999 Act and that running chit fund business by A-1 comes within the definition of 'financial establishment' under Section 2(c) of the 1999 Act. Section 2(b) reads as follows: (b) "Deposit" means the deposit of a sum of money either in lumpsum or instalments made with a financial establishment for a fixed period, for interest or return in any kind; Section 2(c) reads as follows: (c) "Financial Establishment" means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative 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, (Central Act 10 of 1949). Pothani Chandrasheker V. State of A.P.¹ and P. Lakshmi Narayana Reddy

V. Commissioner of Police, Hyderabad City Police² of this Court did not render any help or assistance to this Court in understanding the purport under Section 2(b) of the 1999 Act. The said pronouncements of this Court deal with the question whether a chit fund Company being a non banking financial company under clause (f) of Section 45-I of the Reserve Bank of India Act falls within the amended definition of Section 2(c) of the 1999 Act. In Pothani Chandrasheker (1 supra) it was held that in view of amendment to Section 2(c) of the 1999 Act by amendment Act No.12 of 2003 which came into effect from 14.07.2003, a Company incorporated under the Companies Act will not go out of the purview of the 1999 Act. In P. Lakshmi Narayana Reddy (2 supra) this Court came to the conclusion that amended provision of Section 2(c) of the 1999 Act which came into effect from 06.11.2003 will not take away non banking financial company out of the 1999 Act.

9) In the case on hand, A-1 is an individual and is neither a company incorporated under the Companies Act nor a non banking financial company as defined under clause (f) of Section 45-I of the Reserve Bank of India Act. Therefore, the above two pronouncements have no relevance herein.

10) Definition of 'deposit' in Section 2 (b) of the 1999 Act, on analysis, contains the following ingredients :

(i) It must be a deposit of a sum of money;

(ii) It can be either in lumpsum or in instalments;

(iii) It should be made with a financial establishment as defined in Section 2 (c);

(iv) It should be for a fixed period ; and

(v) It should be either for interest or for return in any kind. In the case of a chit fund transaction, the subscriptions of money are made monthly or periodically by a member of the chit in instalments for a fixed period with the organizer/foreman of the chit. Though the subscription by a member in chit fund transaction is not for interest, the total subscription amount has to be returned to the subscriber by the end of the chit period which is a fixed period, in case the subscriber did not become highest bidder in monthly or periodical auctions among members and did

not obtain prize amount from the organizer/foreman of the chit. Though there is no element of payment of interest in a chit fund transaction, the subscriber gets return by way of monthly or periodical dividends from out of the highest bid amount which amount is discounted from out of the total chit value while making payment to the prized subscriber who is the highest bidder in the auction. Similarly, organizer of the chit becomes 'financial establishment' as defined in Section 2(c) of the 1999 Act since the organizer/foreman accepts the deposit by way of periodical subscriptions from the members under a scheme or arrangement specifically called as chit-fund transaction. Therefore, the definitions of 'deposit' under Section 2 (b) and 'financial establishment' under Section 2 (c) of the 1999 Act are satisfied in case of organizer of a chit fund transaction receiving subscriptions from members of the chit. Contention of Appellant's senior counsel that the amount should carry interest and it is sine qua non of a 'deposit' as per Section 2 (b) of the 1999 Act is not tenable. The amount being received as deposit has to be either for interest or for return in any kind. In the case of a chit fund transaction, 'return in any kind' is by way of dividends.

11) It is contended for the Appellant that there are special enactments regulating chit fund transactions and that therefore the provisions of the 1999 Act cannot be applied to a chit fund transaction. Though the Andhra Pradesh Chit Funds Act 1971 (In short, the 1971 Act) and the Chit Funds Act 1982 (In short, the 1982 Act) are there for regulation of chit fund transactions, the 1999 Act is again a special enactment which was enacted for protection of depositors of financial establishments. Statement of objects and reasons appended to the 1999 Act reads as follows : "Instances have come to the notice of the State Government, wherein a number of unscrupulous financial establishments in the State are cheating innocent, gullible depositors by offering very attractive rates of interest collecting huge deposits and then vanishing suddenly. The depositors are being cheated and are put to grave hardship by losing their hard earned savings. To curb these malpractices, the State Government have decided to bring a law for protecting the interests of depositors of financial establishment in the State and for matters connected therewith or incidental thereto. The above issue was also discussed in a Conference of the State Chief Ministers and Finance Ministers presided by the Union Finance Minister on 14-09-1998 at Vignan Bhavan, New

Delhi. The Union Finance Minister also desired that States should take expeditious steps for enacting legislation on the lines of "Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, "to restore the confidence amongst the innocent depositors and also to serve as a deterrent against malpractices by such establishments during the course of acceptance of public deposits. To achieve the above object, the Government have decided to make a separate law by undertaking Legislation".

12) There is no provision in the 1999 Act dealing with repeals and savings. The 1999 Act was enacted by the State Legislature in addition to and not in derogation of any existing law dealing with the subject. The State Legislature enacted the 1971 Act for regulation of chit funds in the state of Andhra Pradesh. The 1971 Act was repealed by Section 90 of the 1982 Act passed by the Parliament. As per Section 1 (3) of the 1982 Act, that Act comes into force on such date as the Central Government may by notification in the Official Gazette appoint and different dates may be appointed for different States. Under Section 89 of the 1982 Act, the State Government in consultation with Reserve Bank of India has to make rules by notification in the Official Gazette for giving effect to the provisions of that Act. So far the Government of Andhra Pradesh has not made any rules under Section 89 of the 1982 Act. Therefore, till coming into force of the 1982 Act by notifying rules by the State Government, the 1971 Act is deemed to be in force.

13) Section 56 of the 1971 Act deals with penalties for contravention of certain provisions of the said Act. Section 56 reads as follows :

"Penalties:- (1) Whoever contravenes or abets the contravention of any of the provisions of sub-section (1) of Section 3 or Section 4, sub-section (1) of Section 7 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both. (2) Any foreman - (a) who does not file the chit agreement under Section 9 or a copy of any document under Section 11, sub-section 2 of Section 20, sub-section (2) of Section 21, Section 29 or Section 32 within the period specified for such filing or within the further time allowed under Section 55 for such filing; or (b) who contravenes any of the provisions of Section 8, sub-sections (1), (2) and (6) of

Section 12, Section 14, Section 15, Section 16, Section 18, Section 20, Section 21, Section 23, sub-section (4) of Section 25, Section 29, Section 35, Section 36, Section 37 and sub-section (4) of Section 51 ; or (c) who fails to comply with the requirements of the chit agreement regarding the date, time and place at which the chit is to be drawn; shall be punishable with fine which may extend to one hundred rupees. (3) Whoever in any document required by or for purposes of, any of the provisions of this Act, wilfully makes a statement false, in any material particulars knowing it to be false, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both".

14) There is no penal provision under the 1971 Act providing for punishment in case of 'default' committed by organizer/foreman of the chit by not paying prize amount to the successful highest bidder or in case the organizer/foreman of the chit absconds by discontinuing the chit during the course of its currency and by not repaying or refunding the subscription amounts already collected from the members. The 1971 Act predominantly deals with regulatory measures for starting chit fund business, for commencement of a chit and running of the chit till the end of the chit period. In case, the organizer/foreman of the chit commits 'default', no penal remedy is prescribed and no penal liability is attached to such organizer/foreman of the chit under the 1971 Act. Similarly, even if the 1982 Act comes into force, it also does not contain any provision dealing with penal remedy against organizer/foreman of the chit and attaching penal liability for 'default' committed by such organizer/foreman of the chit. Therefore, I have no hesitation to conclude that the 1999 Act is equally applicable in the case of a chit fund transaction also in addition to applicability of the existing 1971 Act and also the 1982 Act as and when it comes into force.

15) In that view of the matter, the conclusion arrived at by the lower Court is valid and legal. The conviction and the sentence passed by the lower Court against the Appellant/A-1 are in accordance with law and are tenable on facts also. There are no grounds in this Appeal to interfere with the conviction and the sentence passed by the lower Court on the Appellant/ A-1. In the result, the Criminal Appeal is dismissed.

