(2018) 12 CHH CK 0083

In the Chhattisgarh High Court

Case No : Criminal Revision No. 98, 313 Of 2018

Anup Kanakarwal APPELLANT

Vs

State of Chhattisgarh And Ors RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 405, 409, 415, 420
Chhattisgarh Protection of Depositors' Interest Act, 2005 — Section 10
Code of Criminal Procedure, 1973 — Section 161, 397

Citation : (2018) 12 CHH CK 0083

Hon'ble Judges : Arvind Singh Chandel, J

Bench : Single Bench

Advocate : Ishan Verma, Sangharsh Pandey

Final Decision : Dismissed

Judgement

1. Since both the revisions arise out of a common order, they are disposed of together by this common order.

2. The instant revisions have been preferred against the order dated 24.10.2017 passed by the Special Judge under the Chhattisgarh Protection of Depositors' Interest Act, 2005 (henceforth 'the Act of 2005'), Raigarh in Special Case No.2 of 2017, whereby the Special Judge has framed charges against both the Applicants under Sections 420/120B and 409/120B of the Indian Penal Code and Section 10 of the Act of 2005 read with Section 120B of the Indian Penal Code.

3. Facts, in brief, are that two different complaints were separately made by Complainants Vivek Shrivastava and Tez Ram Patel against both the Applicants and other persons alleging that in the year 2011 the present Applicants and other persons came to the Complainants and told that they are agents of one chit fund company, namely, Guru Sai Real Estate and Allied Limited and they alluring the Complainants that their money will be doubled within a period of 6 years asked them to deposit/invest money in the said company. They, frequently alluring the Complainants, got Rs.50,000/- deposited in the company from

Complainant Vivek Shrivastava and Rs.5,00,000/- from Complainant Tez Ram Patel. Next day, they gave internal cheques and bonds to the Complainants and told them that on being deposited the said cheques and bonds at Raipur they will get their money. After 1 year, the Complainants went to the office of the company at Raipur, but they found there that the office of the company was locked and the officials of the company had absconded. On the basis of the complaints, offence has been registered and vide the impugned order dated 24.10.2017, the Special Judge has framed the charges against the Applicants as mentioned in the second paragraph of this order. Hence, the instant revisions.

4. Learned Counsel appearing for the Applicants submitted that there is no document available on record on the basis of which it is prima facie established that both the Applicants were the agents of the said defaulting company. There is also nothing on record on the basis of which it could be presumed that the Applicants are responsible for the management or operation of the business or for any affair of the said company. Therefore, no offence under Section 10 of the Act of 2005 is made out against the Applicants. It was further submitted that there is also no evidence on record to establish that the present Applicants had any meeting of mind with the Directors of the said company. Therefore, Section 120B of the Indian Penal Code is also not attracted to the present case. It was further submitted that there is no evidence to the effect that the Applicants had given any allurement to the Complainants and there is also no evidence on record to the effect that the Applicants were entrusted any of the money. Therefore, no case of criminal misappropriation is made out against the Applicants.

5. Learned Counsel appearing for the State submitted that from the statements of the Complainants recorded under Section 161 of the Code of Criminal Procedure, prima facie, it is established that the Applicants were agents of the said chit fund company. There is also evidence on record on the basis of which it is prima facie established that the Applicants had allured the Complainants for investing their money with the said chit fund company and on their allurement the Complainants deposited their money in the said company. Since the money deposited by the Complainants had been misappropriated by the said company, the Applicants, being the agents of the said company, are also responsible for the said misappropriation. Thus, the Trial Court has rightly framed the charges against both the Applicants.

6. I have heard Learned Counsel appearing for the parties and perused the record with due care.

7. Section 405 of the Indian Penal Code defines "criminal breach of trust" which reads as under:

"405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriated or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.-A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.-A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees" State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

8. Section 415 of the Indian Penal Code defines "cheating", which reads as under:

"415. Cheating.-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation-A dishonest concealment of facts is a deception within the meaning of this section."

9. The ingredients in order to constitute a "criminal breach of trust" are: (i) entrusting a person with property or with any dominion over property (ii) that persons entrusted (a) dishonestly misappropriating or converting that property to his own use: or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation (i) of any direction of law proscribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust.

10. The ingredients of an offence of "cheating" are : (i) there should be

fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. On examination of the facts of the instant case in the light of above legal position, I find that it is not in dispute that both the Complainants deposited their money of Rs.50,000/- and Rs.5,00,000/- with the said chit fund company. It is also not in dispute that on investigation, it has been found that the Directors of the said chit fund company are Rohit Deosat, Santosh Deosat and others and they are absconded. In their statements recorded under Section 161 of the Code of Criminal Procedure and the complaints made by them, both the Complainants have stated that the Applicants had told that they are agents of the said chit fund company and they had been continuously alluring the Complainants for depositing their money with the said chit fund company. On allurement being given by the Applicants themselves, the Complainants gave cash of Rs.50,000/- and Rs.5,00,000/- to the Applicants for depositing in the said chit fund company. Complainant Vivek Shrivastava has also stated that the money taken from him by Applicant Anup was deposited in the account of one Rakesh Sharma, who was an agent of the said chit fund company situated at Raipur. In his statement, he has further stated that next day, he and other Complainant Tez Ram Patel were taken to Raipur in a car and there they were given some internal cheques and bond papers and they were told that their money will be matured in 6 years and they will get three times of their invested money. Thus, prima facie, it is established that on being allured by the Applicants, both the Complainants deposited their money with the said chit fund company. From the evidence collected by the prosecution, it is prima facie also established that the money invested/entrusted by the Complainants with the said chit fund company had been misappropriated by the said company. Being agents of the said chit fund company, prima facie, the Applicants are responsible for the said misappropriation of money of the Complainants.

12. The scope of interference and exercise of jurisdiction under Section 397 of the Code of Criminal Procedure has been discussed by their Lordships of the Supreme Court in State of Rajasthan v. Fatehkaran Mehdu (AIR 2017 SC 796). In that case, it has been observed by the Supreme Court that at the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which, if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in

consonance with scheme of the Code of Criminal Procedure.

13. Applying the aforesaid principle to the instant case, at this stage, considering the statements of witnesses and the documents which have been placed before the Special Judge, I am of the view that there is a prima facie case made out against both the Applicants under Sections 420/120B and 409/120B of the Indian Penal Code and Section 10 of the Chhattisgarh Protection of Depositors' Interest Act, 2005 read with Section 120B of the Indian Penal Code.

14. Consequently, I find no merit in both the revisions. They are, therefore, dismissed.

15. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.