

(2013) 03 MAD CK 0150

In the Madras High Court

Case No : Criminal RC (MD) No. 483 of 2012 MP (MD) No. 1 of 2012

Aruna and Others

APPELLANT

Vs

State of Tamil Nadu and D.R. Rojavathi

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act,
1997 — Section 5

Citation : (2014) CriLJ 375 : (2013) 2 LW(Cri) 212

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : M. Rajaram, for the Appellant; S. Prabha, GA-R1, for the Respondent

Judgement

Aruna Jagadeesan, J.—This Criminal Revision Case is filed against the order dated 3.10.2012 made in Cr.M.P. No. 2141/2012 in CC. No. 40/2008 by the learned Special Judge under TNPID Act, Madurai, dismissing the petition filed u/s 227 of Cr.P.C. seeking to discharge the Petitioners/A3 to A5 from the criminal proceedings in CC. No. 40/2008. The Petitioners, arrayed as A3 to A5, have contended that they have nothing to do with A1 Partnership Firm, namely, K.L. Krishnamoorthy-K.R. Sudharsan Small savings Santha Chit, which is facing trial along with the other accused for the offence alleged to have been committed u/s 5 of the Tamil Nadu Protection of Interest of Depositors Act, 1997 (herein after referred to as the Act). According to the Petitioners, A1 Firm is the Partnership Firm not registered under the provisions of law and the Petitioners were not at all the partners of the said unregistered Partnership Firm at any point of time nor they were involved in the affairs of the Financial Institution. The statements obtained by the Respondent Police from various witnesses do not make out any offence as against the Petitioners herein. The Petitioners have been implicated for the simple reason that the Petitioners herein are closely related to A2 K.R. Sudarsan, i.e. 1st Petitioner/A3 is the wife of A2 and the Petitioners 2 and 3/A4

and A5 are the son and daughter of A2. Therefore, the Petitioners have sought for discharge from the criminal Prosecution launched by the Respondent Police.

2. The Respondent contended that all the Partners of AI Firm committed default in repayment of deposits and interest to the defacto complainants even after maturity. It is further stated that during the investigation by the Respondent Police, it came to light that the Petitioners had instigated the depositors to deposit their money with A1 Firm and they are the active participants in the activities of A1 Firm.

3. The points that arise for determination are as (1) whether the Petitioners, who are allegedly partners of AI Firm, are liable to answer the charge u/s 5 of the Act and (2) whether the Petitioners were responsible for the management of the affairs of the Financial Institution.

4. The learned counsel for the Petitioners would vehemently submit that u/s 5 of the Act, only those persons, who are partners of the Registered Firm, would be liable and not innocent parties like the Petitioners herein. He would also submit that the Petitioners herein are neither partners nor they are the beneficiaries and they have nothing to do with the day-to-day activities of the Partnership Firm, but have been implicated by the Respondent Police for the reasons best known to them. Therefore, the learned counsel would submit that the Petitioners, who have been roped in for the offence u/s 5 of the Act, just because they happened to be wife, son and daughter of A2, are entitled to be discharged from the criminal proceedings.

5. On the other hand, the learned Government Advocate would contend that the Petitioners are the participants in the activities of A1 Partnership Firm and they are the real partners of the said Firm. It is further submitted that the witnesses, examined by the Respondent Police during the course of investigation, have also spoken to the fact that the Petitioners canvassed the depositors to deposit the amount in A1 Firm and that canvassing for deposit for a financial institution would definitely amount to participation in the management of the affairs of the Firm and therefore, the Petitioners cannot shirk their responsibility in the management of the firm and lawfully seek for discharge.

6. In the counter, it is merely stated that the Petitioners conducted A1 Firm and collected deposits from the depositors, including the defactor complainant. It is not stated that the Petitioners either issued promissory notes and pass books or signed any of the promissory notes or pass books alleged to have been produced by the Respondent Police nor had issued receipts in favour of the depositors for the deposits. It is merely stated that the Petitioners are the partners of A1 Firm and they have actively participated in the day-to-day activities of A1 Firm and so, they have been arrayed as accused in this case.

7. From the counter, it is discernible that the Petitioners have not signed promissory notes or pass books nor issued any receipts in favour of the depositors. Since they happened to be the close relatives of A2, it has been

presumed that they are the partners and they have participated in the management of the affairs of the Firm. In order to prove that it is a registered partnership firm and the Petitioners are the partners of A1 Firm, no document has been filed by the Prosecution. In the absence of any such material, merely on the omnibus allegations, it cannot be presumed that the Petitioners were the partners and have canvassed for unregistered partnership firm.

8. The learned counsel for the Petitioners referred to the decision of this court reported in Smt. Prasannadevi Vs. State of Tamil Nadu, Cuddalore) wherein it has been held that to invoke the penal provision u/s 5 of the Tamil Nadu Protection of Interest of Depositors Act, the person charged should shoulder the responsibility of managing the affairs of the financial institution. It further held that a canvassing agent may contribute his mite by mobilizing funds for the financial firm on contract basis for payment of brokerage or service charges, but it cannot be said that such a person shoulders the responsibility of the management of the affairs of the firm so as to invoke the penal provision u/s 5 of the TNPID Act.

9. In the case of V. Subramanian and others Vs. State by Inspector of Police (Crl. OP. No. 25924/2006) by order dated 10.7.2009, it is held by this court as follows:--

11. The words "responsible for the management of affairs of the Financial Establishment" could be interpreted to mean that only those persons, who were responsible for collection of the deposits and failed to return the money or the interest on such deposit, are criminally liable. That is why the word "responsible" is expressed and not the word "management" alone is used. The severity of the punishment with imprisonment for a term, which may extend to 10 years and with fine, which may extend to Rs. 1,00,000/- would only refer to those persons, who were responsible in collecting the amounts from the depositors on promise to give higher interest and failed to return the said deposit even after its maturity.

10. In the case arising u/s 138 of the Sabitha Ramamurthy and Another Vs. R.B.S. Channabasavaradhya,), on the complaint lodged by the aggrieved person on dishonour of the cheque, he did not allege that the accused was in charge of and responsible for the conduct of the business of the company and the statement of the witnesses examined on the side of the complainant also did not speak about the charge that the accused was in charge of the affairs of the business of the Company. Therefore, the Honourable Supreme Court has held that the requirement of Section 141 of the Negotiable Instruments Act was not complied with and as a result of which, the criminal proceedings as against the 6th and 8th accused therein were ordered to be quashed.

11. It has been held in K. Srikanth Singh Vs. North East Securities Ltd. and Another, as under:--

4. It is not in dispute that for showing a vicarious liability of a Director of a Company, upon the complaint it is incumbent to plead that the accused was

responsible to the Company for the conduct of the business of the Company. No such allegation having been made in the complaint petition, in our opinion, the High Court was not correct in passing the impugned judgement. The allegation contained in the complaint petition was that all the accused Directors participated in the negotiations for obtaining financial help for the accused No. 1 which in our opinion would not give rise to an inference that the Appellant was responsible for day-today affairs of the Company.

12. In the present case, the fact remains that no material was placed before the court below to show that the Petitioners were partners of A1 Firm charged in the case on hand u/s 5 of the Act. The only allegation leveled by the witnesses examined on the side of the Prosecution is that the Petitioners canvassed for deposits for financial institution. In the counter, it is admitted by the Respondent that the Petitioners are neither signatories to the promissory notes or pass books nor issued any receipts to the depositors on behalf of the Firm. Even assuming that the Petitioners were partners of A1 Firm, they cannot be mulcted with liability, merely because they were the partners of the Firm or close relatives of A2, who was managing the affairs of the Partnership Firm and collecting deposits from the depositors.

13. More often, it is common that some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefit of partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners and ask them to prove that the offence was committed without their knowledge. It is significant to note that the obligation for the accused to prove that the offence took place without their knowledge or that he exercised all due diligence to prevent such offence arises only when the Prosecution establishes that the requisite condition mentioned in Section 5 of the Act is established. The requisite condition is that the partner was responsible for carrying on the business and was during the relevant time in charge of the business. In the absence of any such proof, merely because he is a partner of the Firm, he cannot be convicted.

14. In *Monaben Ketanbhai Shah and Another Vs. State of Gujarat and Others*, it has been held as follows:--

Section 141 does not make all partners liable for the offence. Criminal liability has been fastened on those who, at the time of commission of offence, was in charge of and was responsible to firm for conduct of business of firm. These may be sleeping partners. Primary responsibility is on complainant to make necessary averments in complaint so as to make accused vicariously liable. For fastening criminal liability, there is no presumption that every partner knows about the transaction. The obligation of appellants to prove that at the time of offence was committed they were not in charge of and were not responsible to the firm for conduct of business of firm, would arise only when complainant makes necessary

averments in complaint and establishes that fact. The instant case is of total absence of requisite averments in complaint. Therefore, order of Magistrate directing discharge of accused persons, holding that there are no allegations in complaint making out offence against them is proper.

15. In the present case, it is evident that the family members, who have nothing to do with the financial bungling of the institution, are roped in on the mere allegation that they canvassed for deposit for the financial institution. Such a practice should be stopped forthwith as otherwise innocent victims just because they happened to be the relatives of the mis-managed financial institution would be roped in and they have to undergo the ordeal of criminal trial.

16. Without considering the aforesaid facts and circumstances of the case, the court below has improperly dismissed the plea of the Petitioners for discharge on the ground that they are the relatives of A2 and their names found a place in the First Information Report and that there are allegations in the statements recorded by the investigating agency that they are the partners of the partnership firm and they canvassed deposits for the financial institution. Therefore, in view of the discussions made above and the decision of the Honourable Supreme Court and this court cited supra, the impugned order is liable to be set aside and the Petitioners are liable to be discharged from the impugned criminal proceedings. In the result, this criminal revision petition is allowed. The impugned order dated 3.10.2012 made in Cr.M.P. No. 2141/2012 in CC. No. 40/2008 by the learned Special Judge under TNPID Act, Madurai is set aside. The Petitioners herein are discharged from the criminal proceedings in CC. No. 40/2008. No costs. Consequently, the connected MP is closed.