(2002) 02 AP CK 0085

In the Andhra Pradesh High Court

Case No : Criminal P. No. 500 of 2002

Gourishetty Prabhakar APPELLANT

Vs

State of Andhra Pradesh and Another RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 — Section 13, 3, 4, 5, 7

Citation : (2002) 1 ALT(Cri) 492

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : A. Narasiha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—This petition is filed to quash the FIR in Cr.No.278 of 2001 registered by I Town Police Station, Karimnagar, under Sec. 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999 (for short "the Act").

2. One Gampa Suvarna submitted a complaint before the District & Sessions Judge, Karimnagar on 10.11.2001, alleging that the petitioner, who is the Managing Director of Sneha Financial Services, a finance institution, approached her and requested her to make investment in the said institution promising to repay double the amount deposited as a fixed deposit within 42 months, and took Rs.70,000/- (Seventy thousand rupees) from her and issued a Fixed Deposit Receipt, promising to pay Rs. 1,40,000/- on 03.10.1999, and that in spite of repeated requests he failed to repay the amount after the due date and thus had committed an offence punishable under Sec. 5 of the Act. The learned Sessions Judge forwarded the complaint to Police for investigation and the police registered the same as Cr.No.278 of 2001 under Sec. 5 of the Act and took up investigation. This petition is filed to quash the said complaint on the ground that

since the Act came into force on 01.11.1999 and since the cause of action arose on 03.10.1999, i.e., prior to the coming into force the Act, the provisions of the Act have no application to the facts of the case, because the Act has no retrospective effect. It is also contended that unless a competent authority gives a complaint, the Special Court cannot take cognizance of the offence.

3. I am unable to agree with the contention of the learned counsel for the petitioner that the Special Court cannot take cognizance of the offence under Sec. 5 of the Act, unless the procedure prescribed under Sec. 7 of the Act is followed. Sec. 7 relates to attachment of property being made absolute where the Government had under Sec. 3 of the Act ordered an interim attachment of the property. As per Sec. 7 of the Act, after receipt of an application under Sec. 4 from the competent authority, the Special Court shall issue notice to the financial establishment, whose property was attached by the Government under Sec. 3 of the Act, to show cause why the attachment should not be made absolute. Thus, Section 7 has nothing to do with the punishment prescribed under Sec. 5 of the Act. As per Sec. 13 of the Act, the Special Court can take cognizance of the offences without the accused being committed to it for trial, and in trying the accused has to follow the procedure prescribed by Cr. P.C. for trial of warrant cases by a Magistrate, and that provisions of Cr. P.C. shall apply to the proceedings before it, and for the purpose thereof the Special Court shall be deemed to be a Magistrate Court. There is nothing in the Act or the Rules made thereunder to show that a complaint cannot be filed by an aggrieved person directly before the Special Court. So, the contention of the learned counsel for the petitioner that the complaint filed by the aggrieved person directly, without reference to the competent authority, is not maintainable, cannot be accepted.

4. Coming to the question of retrospectivity of the Act, in my opinion, the contention of the learned counsel for the petitioner cannot be upheld. It should not be forgotten that the cause of action survives till the date petitioner repays the amount accepted as deposit or till the expiry of the period of limitation prescribed for recovery of the same. Though the deposit matured on 03.10.1999, cause of action to recover the amount was surviving to the complainant by the date of filing of the complaint, i.e., 10.11.2001 also, i.e., after the Act came into force. Therefore, the contention of the learned counsel for the petitioner that since the deposit matured before the coming into force of the Act, the provisions of Sec. 5 of the Act cannot be made applicable to that deposit, cannot be accepted.

5. Hence I find no merits in the petition and the petition is accordingly dismissed.

