(2010) 12 MAD CK 0173

In the Madras High Court

Case No : Criminal Appeal No. 721 of 2010

G.S. Ramarao Gupta G. Anand Swaroop — APPELLANT

Vs

The Competent Authority and District Revenue Officer and The State of Tamilnadu — RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 1, 11, 13, 2, 3

Citation : (2011) 1 LW(Cri) 361

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Shanmugham, for the Appellant;

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The present appeal has been filed as a criminal appeal against an order passed by the Special Judge under the TNPID Act, Chennai in I.A. No. 47 of 2010 in O.A. No. 11 of 2007.

2. The said interlocutory application was filed by the Petitioners herein u/s 7(5) of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 praying for the refund of a sum of Rs. 46,82,933/- from out of the deposit of Rs. 1,78,11,531/-made to the credit of the above said original application, namely O.A. No. 11 of 2007 on the file of the Special Judge, under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 , Chennai. The said prayer was made seeking refund of the said amount on the premise that the same would enable the Petitioners to settle the claims of the depositors, concerned in the criminal cases registered against the Petitioners, namely C.C. Nos. 50 of 2008, 51 of 2008 and 102 of 2008. The said criminal cases were registered on the file of the Economic Offences Wing II, Salem. Now the criminal cases are pending before the Special Judge under the TNPID Act, Coimbatore.

3. The first Petitioner, who is no more, was the partner in the financial establishment by name Vani Finance, against which proceedings were initiated under the TNPID Act in O.A. No. 11 of 2007 as well as in the above said criminal cases. Since the first Petitioner has died, the second Petitioner, the son of the deceased first Petitioner, has chosen to file the above said interlocutory application in O.A. No. 11 of 2007, which had already been disposed of by the Special Judge under the TNPID Act, Chennai. The learned Special Judge under the TNPID Act, Chennai, after hearing both sides, passed an order on 27.10.2010, dismissing the said interlocutory application, holding that the jurisdictional Court was functioning at Coimbatore and criminal proceedings in C.C. Nos. 50 of 2008, 51 of 2008 and 102 of 2008 were pending on the file of the Special Court under the TNPID Act, Coimbatore and that under such circumstances, the prayer of the second Petitioner could not be entertained. The said order is now sought to be challenged by preferring the present criminal appeal, purportedly filed u/s 11 of Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997.

4. Though Mr. Anand Swaroop, shown as the second Appellant, was able to get this appeal numbered as a criminal appeal, this Court entertained a doubt regarding the maintainability of a criminal appeal against the impugned order of the Special Judge under the TNPID Act, Chennai. Therefore, before admission, the arguments advanced on the side of the Appellants on the question of maintainability of the criminal appeal were heard.

5. Mr. Anand Swaroop, claiming to represent one of the partners of the financial institution as his son, since the said partner is no more, has committed a mistake in providing a cause title showing his father G.S. Ramrao Gupta to be the first Petitioner and showing himself to be the second Petitioner. The resultant position is that in the appeal memorandum, the very same mistake is reflected and repeated. The said mistake may be technical and we need not harp on such a technical defect. But, a more vital defect in the filing of the appeal as a criminal appeal is noticed by this Court. The learned Counsel for the Appellants argued that this criminal appeal is maintainable on the assumption that the entire provisions contained in Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 are penal in nature and that every proceedings under any of the provisions of the said Act would be a criminal proceedings and hence against any order passed by the competent authority or the Special Court, a criminal appeal shall lie to the High Court in terms of the language of Section 11 of the said Act. This Court is not in a position to accept the above said contention of the learned Counsel for the Appellants. A cursory glance at the provisions of the Act will show that the Act is mainly intended to protect the rights of the depositors and incidentally a penal provision is made for the punishment of the defaulters of re-payment of deposits to the depositors and interest to the depositors on the deposits collected from them.

6. The Act is a short one containing just 15 sections. As usual, Section 1 deals

with the title and commencement and Section 2 contains definitions. Section 3 enables the Government, when they have reason to believe upon complaints received from a number of depositors that any financial establishment is acting in a calculated manner with an intention to defraud the depositors, when the Government are satisfied that any financial establishment committed default in returning the deposits after maturity or failed to pay interest on deposits or fails to provide the service for which the deposit has been made and where the Government have reason to believe that any financial establishment, with an intention to defraud the depositors and the Government are satisfied that such Financial Establishment is not likely to return the deposits, or to make payment of interest or to provide the service, in order to protect the interests of the depositors of such Financial Establishment to pass an ad-interim order of attachment . The properties liable to be attached are not only money and other properties belonging to the Financial Establishment, its Directors, Proprietor or partners, but also the properties in the hands of third parties, including the persons, who have availed loan from the Financial Establishment to the extent of their liability towards Financial Establishment. Section 4 provides for an appointment of a competent authority to exercise control over the properties thus attached by the Government u/s 3 of the Act and it also enumerates the powers and functions of the competent authority. The Competent Authority is also enjoined with the duty to apply within 30 days from the date of an order passed by the Government u/s 3 to apply to the Special Court under the TNPID Act for making the ad-interim order of attachment absolute.

7. The arrangement of Sections provides for the intervention of the Government not only in case of commission of default in repayment of deposits or payment of interest honouring the commitment, but also in cases where the Government are satisfied that such Financial Establishment is not likely to return the deposits or to make payment of the interest or to provide the services for which the deposits have been made. Only Section 5 and 5A are the penal provisions. Section 5 makes the default by a Financial Establishment in returning the deposit or default in payment of interest on the deposit, failure to return the deposit in any kind or failure to render service for which the deposit has been made, as a punishable offence and every person responsible for the management of the affairs of the Financial Establishment thus committing the default, shall be prosecuted and punished with imprisonment, which may extend to ten years and fine that may extend to one lakh of rupees. In addition to that the Financial Establishment shall also liable for fine, which may extend to one lakh of rupees. u/s 5A, the said offence has been made a compoundable one.

8. Section 6 deals with the notification and constitution of one or more Courts under the TNPID Act. Sub-section (1) says that the judge shall be in the cadre of a District and Sessions Judge. Sub-section (2) says that no other Court other than the Special Court, shall have jurisdiction in respect of any matter to which the provisions of the Act shall apply. Sub-Section 3 says that any case pending in any other Court to which the provisions of this Act apply, shall stand transferred

to the Special Court. Sub-section (3) does not restrict its application of transfer of cases to the Special Court to criminal cases alone. Irrespective of the nature of the case, whether civil or criminal, which come under the purview of the Act, shall stand transferred to the Special Court.

9. Sub-Section 4 of Section 6 is more crucial. It says when trying any case, the Special Court may also try any offence, other than an offence specified in Section 5, with which the accused may, under the code of Criminal procedure be charged, at the same time trial. Sub-section (4) itself makes it abundantly clear that Section 5 alone is the penal provision provided in the Act. Then Section 7 is the pivotal provision prescribing the procedure to be followed after an interim attachment is made by the Government u/s 3 and an application for making it absolute is made by the competent authority u/s 4 of the Act. As per Sub-section (1) of Section 7, based on an affidavit and evidence, if any recorded, the Special Court shall issue a show-cause notice calling upon the person interested to show-cause as to why the order of attachment should not be made absolute. Sub-section (2) says that on receipt of such notice, either the Financial Establishment or the person to whom such notice is issued under Sub-section (1) may make objection, if he so desires, to the attachment of he property or any portion thereof on the ground that he has an interest in such property or portion thereof. Sub-section (3) enables a person, who claims to have interest in such property attached, to raise objection before the Special Court, even though he is not served with a notice under Sub-section (1) of Section 7. Sub-section (4) is to the effect that if no cause is shown, the Special Court shall forthwith pass an order making the ad-interim order of attachment absolute. Sub-section (5) says that if cause is shown or objection is made, then the Court shall proceed to investigate the same. Sub-section (6) says that the Special Court after taking evidence adduced in this regard, may either make the ad-interim order of attachment absolute or cancel the ad-interim order of attachment or vary the same by releasing a portion of the property from attachment. Under Sub-section (5) of Section 7, it is made obvious that while investigating the objections regarding attachment, the special Court shall follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure.

10. Section 13 is to the effect that the Special Court may take cognizance of the offence, namely an offence u/s 5 of the Act, without the accused being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the code of criminal procedure, 1973 for the trial of warrant cases by Magistrates. It also provides that the provisions of the code of criminal procedure shall, so far as may be, applied to the proceedings before a special Court and for the purpose of the said provisions, a Special Court shall be deemed to be a Magistrate.

11. When the arrangement of the Sections in the Act is considered, it shall be clear that one or more Special Courts are to be constituted under TNPID Act principally for protecting the interest of the depositors, which is civil in nature

and incidentally for punishing the defaulters, which alone is criminal in nature. Sub-section (5) of Section 7 makes it clear that while dealing with the cases which are to be tried as civil cases, provisions of the CPC shall be attracted. As per Section 13 for trial of offences under the Act, namely the offences u/s 5 of the Act, provisions of Code of Criminal Procedure are attracted and the Court, while trying such offences shall be deemed to be a Magistrate trying a warrant cases.

12. Therefore, this Court does have no hesitation to reject the contention of the learned Counsel for the Appellants that the entire Act is a penal Act and any order passed shall be an order in exercise of the criminal jurisdiction and that the same can be appealed against by preferring a criminal appeal. Section 11 is general. It does not specify whether the order to be appealed against shall be civil in nature or criminal in nature. It simply states that the appellate forum to entertain an appeal against the order of the Special Court, shall be the High Court. It doesn''t mean that any order passed under the Act, can be challenged by preferring an appeal as a criminal appeal. In view of the above said discussions, this Court comes to the conclusion that the order sought to be appealed against is civil in nature and only a civil miscellaneous appeal and not a criminal appeal is competent.

13. In the result, this appeal is dismissed as not maintainable. However, it is made clear that an appeal on the civil side of the High Court can be preferred, if it is otherwise competent.

