
(2008) 11 MAD CK 0040
In the Madras High Court
Case No : Writ Petition No. 2965 of 2003

Maria Cruz

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-11-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 420
Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act,
1997 — Section 3, 5

Citation : (2008) 11 MAD CK 0040

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : No appearance, for the Appellant; D. Geetha, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This writ petition has been filed praying for a writ of mandamus to call for the records relating to the impugned order in

G.O.Ms. No. 352, Home (Courts IIA) Department, dated 24.04.2002, passed by the first respondent and to quash the same.

2. The petitioner has stated that one of his relatives, namely, Jerome David, had started a financial establishment in the year 1999. The said Jerome

David had expired on 21.06.2002. He was working as a Government servant in the various departments of the Government of Tamil Nadu and he

had resigned his job after working for more than 12 years. The financial institutions started by Jerome David in the name of "Jerma Bankers, where

several persons had deposited their amounts and loans were also given to various persons. However, a few persons, who were inimical to Jerome

David had instigated the depositors to lodge a false complaint, before the second

respondent. Thereafter, the third respondent had interfered with the affairs of the Bank obstructing his business transactions. A criminal case in Crime No. 7 of 2001, had been registered, u/s 420 IPC and Section 5 of the TNPID Act, against Jerome David and five others, including the petitioner herein. After the death of Jerome David, the first respondent had attached certain properties, vide G.O.Ms. No. 352, dated 24.04.2002. It has been further stated that as per the provisions of the, the immovable properties which have been of Interests of Depositors (in Financial Establishments) Act, 1997 purchased by the financial establishment, from the deposits collected from the depositors, can be attached. However, the petitioner and Jerome David had not procured any immovable property from and out of the deposits collected from the depositors. The first respondent had passed an order of attachment, vide G.O.Ms. No. 352, dated 24.04.2002, even though the said properties had been purchased by the petitioner and by Jerome David prior to the establishment of the Bank. Based on the said order, the third respondent and the Tahsildar, Kalkulam Taluk, had been asking the petitioner to vacate and hand over the present properties.

3. In the counter affidavit filed on behalf of the first and second respondents, the allegations made by the petitioner have been denied. It has been stated that Jerome David who is the relative of the petitioner had started a financial business in the name of "Jerma Bankers", in the year 1999. He had collected various amounts as deposits. When the depositors had demanded for the refund of their deposits, the Bank had refused to do so. Hence, the complaint had been lodged by the depositors against Jerome David stating that he had cheated them. Consequently, the third respondent herein had registered a case in Crime No. 7 of 2001, u/s 420 IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, against Jerome David and five other persons, including the petitioner. It has also been stated that the petitioner had accepted that he had collected deposits for the Bank from several persons. Hence, he is liable to re-pay the refund of deposits to the depositors, whenever they demanded the deposits. The allegation of the petitioner that the complaints lodged against Jerome David and the petitioner were false, cannot be accepted. There is no documentary

evidence to prove his contention. The petitioner is not a stranger to the Bank as he had taken part in its affairs, along with Jerome David. Since it was alleged that the petitioner, along with Jerome David had misappropriated the funds of the bank, cheating the depositors, a criminal case has been filed against them in Crime No. 7 of 2001. After the State Government had carefully examined the matter, it had issued orders in G.O.Ms. No. 352, Home (Courts-IIA) Department, dated 24.04.2002, attaching the properties belonging to the petitioner, as well as those which belongs to Jerome David. The said Government Order has been issued only to prevent the interest of the depositors, in accordance with the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. An amount of Rs. 42,00,000/- have been misappropriated by the petitioner and Jerome David. As per the provisions of Section 3(ii) of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, if the money and the property procured from and out of the deposits made are not sufficient for the repayment of the deposits, the Government may attach such of the properties of the said financial establishment or the promoter partner, Director, Manager or member of the said Financial Establishment or borrowers, to the extent of the default. Thus, the Government is empowered to attach such other properties to protect the interests of the depositors provided it is satisfied that the financial establishment is not likely to return the deposits to the depositors.

4. The learned Counsel appearing on behalf of the petitioner had stated that the order passed by the first respondent is contrary to the facts and the law. The first respondent had failed to note that the properties attached were purchased by the petitioner and Jerome David, prior to the establishment of the Bank. The immovable property which were mentioned in the order of attachment had been purchased prior to the establishment of the Bank. The said property had not been purchased from and out of the deposits made by the depositors of the petitioner. No enquiry had been conducted on the relevant date as to whether the properties attached were purchased prior to the establishment of the Bank or thereafter. The petitioner is not a partner in the Bank and with regard to the purchase, he is in no way connected with the business.

5. Per contra, learned Government Advocate appearing for the first respondent

had submitted that when the impugned order has been passed by the first respondent, only in accordance with the provisions of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, since a prima facie case has been made out against the petitioner, as well as Jerome David, who had established the "Jerma Bankers", and the properties had to be attached, since the first respondent had satisfied that the financial establishment has no material to return the deposits to the depositors. The impugned order had been passed only the complaints given by the depositors. However, a criminal case had been lodged and the same has been registered in Crime No. 7 of 2001, u/s 420 IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. Therefore, the contentions raised on behalf of the petitioner are devoid of merits. Hence, the writ petition is liable to be dismissed.

6. This Court had heard the contentions of the learned Counsel appearing for the petitioner, as well as the respondents and has perused the Government Order in G.O.Ms. No. 352, Home (Courts IIA) Department, dated 24.04.2002, enclosed in the typed set of papers.

7. The first respondent had passed the order based on the complaints received from the depositors of the Bank and after having been satisfied that

the financial institutions has not likely to return the deposits received from the depositors. As per the provisions of the 3(ii) of the Tamil Nadu

Protection of Interests of Depositors (in Financial Establishments) Act, 1997, not only the properties which had been purchased, but the properties

which had been possessed by the depositors can also be attached, if it is found, that the money and the property purchased from and out of the

deposited amounts are not available for attachment or not sufficient for repayment of the deposits. However, a criminal case has been registered

against the petitioner, Jerome David and five other persons, in Crime No. 7 of 2001, u/s 420 IPC and Section 5 of the Tamil Nadu Protection of

Interests of Depositors (in Financial Establishments) Act, 1997.

8. Under such circumstances, the reliefs sought for in this writ petition cannot be granted by this Court, at this stage. Hence, this writ petition stands

dismissed. No Costs.