
(2017) 02 MAD CK 0104
In the Madras High Court
Case No : Crl. R.C. No. 533 of 2011

P. Subramani

APPELLANT

Vs

The Reserve Bank of India

RESPONDENT

Date of Decision : 20-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)

Citation : (2017) 1 LW(Crl) 476 : (2017) 2 MLJCriminal 29

Hon'ble Judges : Mr. V. Bharathidasan, J.

Bench : Single Bench

Advocate : Mr. Anand Venkatesh, Advocate, for the Petitioners; Mr. T. Poornam, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. V. Bharathidasan, J.—This revision has been filed against order passed by the learned Additional Chief Metropolitan Magistrate, (E.O.I), Egmore, Chennai, dismissing the petition filed by the revision petitioners under Section 245(2) of Cr.P.C. to discharge them from the criminal case.

2. The fact of the case, in brief, is as follows:-

(i) The Revision Petitioners are accused 2,3 and 4 in E.O.C.C. No.14 of 2001, pending on the file of the learned Chief Additional Metropolitan Magistrate, (E.O.I), Egmore, Chennai. Earlier, the respondent/Reserve Bank of India, filed a complaint, against the petitioners and other 12 persons, under Section 200 Cr.P.C for the offences under Sections 45QA, 58B(4 AAA) and 58E(1) of the Reserve Bank of India Act, 1934 (Hereinafter called as Act). The above said complaint was filed by the respondent on the ground that the first accused in this case is a non banking finance company, originally incorporated and registered in the year 1982 as "Krest Development & Leasing Private Ltd", subsequently changed to "McDowell Krest Finance Ltd". with effect from 04.06.1993. Thereafter, the present 1st accused company, namely, Krest Finance Limited was incorporated

with effect from 11.02.1998.

(ii) So far as the petitioners are concerned, they were Directors of the first accused company upto 21.10.1998 and other accused also Directors of the first accused company and who are all in-charge and responsible of the first accused company for the conduct and business of the company. The first accused company collected deposits from various persons and failed to repay the deposit amount with interest. Hence, number of complaints were filed by the depositors before the Company Law Board under Section 45QA(2) of the Reserve Bank of India Act for non payment of deposit amount. Considering the complaints made by the depositors, the Company Law Board(CLB), passed several orders dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 and 01.12.1998, directed the first accused company, its Directors and concerned officers to repay the deposit together with rate of interest calculated up to the date of payment in accordance with the terms of deposit within a stipulated time. But, the above orders were not complied with by the Directors of the first accused company. Since the orders passed by the Company Law Board was not obeyed by the first accused company as well as the Directors, the Reserve Bank of India has filed the above complaint for non compliance of above said orders, for the offence under Sections 45QA, 58B(4 AAA) and Section 58E(1) of the Reserve Bank of India Act, 1934. Earlier, the Court below taken cognizance of the offence and issued process to all the accused.

(iii) Thereafter, the petitioners herein filed an application under Section 245(2) Cr.P.C. to discharge them from the above criminal case, contending that, all the petitioners herein resigned from the post of Directors of the first accused company on 21.10.1998 and Form 32 has also been filed before the concerned Registrar of Companies as per the requirements of the Companies Act. Now, the first accused company functioning under new management, namely, one Roydu Group. The Company Law Board issued various directions based on the complaint given by the depositors to pay the deposit amount and directed the persons who were responsible for the affairs of the company, namely, A6 to A8. The above accused only filed an undertaking before the Company Law Board to comply with the orders, and the order dated 01.12.1998 passed by the Company Law Board, based on the undertaken given by A6 to A8. Now, the criminal prosecution has been launched by the Reserve Bank of India against the company as well as all those persons irrespective of the fact that whether the directors were in-charge the company and were responsible for the conduct of the business of the company, which is mandatory requirement under Section 58-C of Reserve Bank of India Act.

(iv) All the petitioners have resigned from the post of Directors of the first accused company with effect from 21.10.1998, and now Company Law Board passed an order dated 01.12.1998 based on the undertaken given by the present Directors, so the petitioners cannot be made liable for the non compliance of the order passed by the Company Law Board. Apart from that the petitioners also

not in-charge of the affairs and responsible for the conduct of the business of the company and they cannot be made liable for non compliance of the order, on that ground that they have filed the petition to discharge them.

3. The respondent/Reserve Bank of India, filed a detailed counter affidavit and contested the application stating that the petitioners were Directors of the first accused company and whether they have resigned the Director post on 21.10.1998 cannot be decided in this petition, which can be determined only after framing charges and completion of trial. But, even during that period when they were functioning as Directors of the company, the Company Law Board passed various orders dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 directing the first accused company and its Directors and concerned officers to repay the deposits along with interest. Those orders were not complied with by the first accused company and its Directors. The petitioners being the Directors during the relevant period they were also responsible to comply the orders passed by the Company Law Board. The respondent also specifically denying the fact that they have resigned from the post of the Directors of the first accused company with effect from 21.10.1998, and a show cause notice was also issued to the petitioners for non compliance of the order and being the Directors of the company, they are supposed to comply the order passed by the Company Law Board. The question is whether the petitioners are in-charge and responsible for the affairs of company can be decided the case only after framing the charges and completion of trial, and sought for dismissal of the application.

4. Considering the above, the Court below dismissed the application filed by the petitioners holding that there is no document available to show that the petitioners have resigned from the post of Directors with effect from 21.10.1998 and even otherwise as the Directors of the Company during the relevant period, in which, the Company Law Board passed the orders, the petitioners also liable to be comply with the order, merely because, the accused 6,7 and 8 alone given undertaking, it will not relieve the petitioners from their liability in complying with the orders passed by the Company Law Board, as all the Directors of the company are jointly and severally responsible for compliance of the order passed by the Company Law Board. Apart from that the question is whether the petitioners are resigned from the post of Directors of first accused company from 21.10.1998 and whether they are not vicariously liable for the non compliance of the orders of the Company Law Board are the matters to be determined only after trial and not at this stage.

5. Now, challenging the above order passed by the learned Additional Chief Metropolitan Magistrate(E.O.I), Egmore, Chennai, the petitioners herein filed this Criminal Revision case.

6. I have heard Mr. Anand Venkatesh, the learned counsel appearing for the revision petitioners and Mr.T.Poornam, the learned counsel appearing for the respondent and perused the records available on record.

7. Mr. Anand Venkatesh, the learned counsel appearing for the petitioners would contend that the Company Law Board passed an comprehensive and consolidated order on 01.12.1998, based on a undertaken given by A6 to A8, and directed the first accused company to comply with the order. On the date of passing the consolidated order by the Company Law Board, the petitioners were not Directors of the Company and they have resigned from the Director post with effect from 21.10.1998. The order of Company Law Board dated 01.12.1998 is not binding on them. In view of the consolidated orders passed on 01.12.1998, the earlier orders passed by the Company Law Board stood merged with the latest order dated 01.12.1998, and repayment to the depositors has to be done in accordance with the scheme framed by the Company Law Board and as per the undertaking given by A6 to A8. The Company Law Board also specifically stated that only the new management is responsible for repayment. Since the order dated 01.12.1998 is a comprehensive and consolidated order, and the above order only requires compliance and for the failure of the non compliance, the penal consequences would be attracted only against the person who are responsible for the compliance and the petitioners are not liable to comply with the order. Apart from that criminal liability cannot be mulcted with the petitioners, since they are all not in-charge and responsible of the affairs of the company. Section 58C of the RBI Act, which is parimateria to the provisions of Section 141 of Negotiable Instrument Act, since the petitioners were not in-charge and responsible for the affairs of the company, no criminal prosecution can be initiated against the petitioners. In support of his contention, the learned counsel appearing for the petitioners relied upon the following Judgment, *National Small Industries v. Harmeet Singh Paintal And Another* reported in 2010 (3) SCC 330, *K.K. Ahuja v. V.K. Vora And Another* Reported in 2009(10)SCC 48 and *Ajoy Kumar Chose v. State Of Jharkhand And Another* reported in 2009(14) SCC 115.

8. Mr. T.Poornam, the learned counsel appearing for the respondent would contend that the order passed by the Company Law Board dated 01.12.1998 is applicable all those deposits, which are subject matter of the proceeding culminated in the order dated 01.12.1998, and the order dated 01.12.1998 is covers the deposits, which was matured from 1999 to 2002. The orders passed by the Company Law Board dated 28.04.1998 to 05.06.1998 are separate orders and the earlier orders did not merge with the order dated 01.12.1998, and when the earlier orders passed by the Company Law Board, the petitioners were Directors, and in-charge and responsible for the affairs of the company, the petitioners are also liable to be comply with the orders passed by the Company Law Board. The respondent also made specific averments in the complaint that all the petitioners were in-charge and responsible for affairs of the company. Apart from that whether the petitioners resigned from the post or not is the matter to be decided in the trial by let in evidence it cannot be decided at this stage. In support of his contention, the learned counsel appearing for the respondent relied upon the order passed by this Court in a similar circumstances

in CrI.O.P. No.3652 of 2009 dated 26.02.2015, which is also confirmed by the Hon''ble Supreme Court by dismissing the SLP in SLP (CrI).No.5654 of 2015, and sought for dismissal of the criminal revision case.

9. I have considered the rival submissions carefully and perused the materials available on record.

10. Before considering the rival submissions on merit, it is necessary to consider the power of Magistrate to discharge the accused under Section 245(2) Cr.P.C. Section 245 Cr.P.C. reads as follows:-

245. When accused shall be discharged.

"(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

11. The instant case, is a warrant case instituted otherwise than the police report. Section 245 Cr.P.C, speaks about the discharge of accused in cases instituted otherwise then on police report. Before considering the petition filed under Section 245(1) Cr.P.C., the Magistrate has to hear the prosecution and take all such evidence as may be produced in support of the prosecution under Section 244 Cr.P.C. and after considering all the evidence produced by the prosecution, the Magistrate has to consider whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case is made out against the accused, then the Magistrate can discharge the accused. But the situation is difference in petition filed under Section 245(2) Cr.P.C. Under Section 245(2) Cr.P.C., the Magistrate can discharge the accused at any previous stage of the case, namely, even before such evidence is taken under Section 244 Cr.P.C. if the Magistrate finds the charge is groundless. At the time of considering the application under Section 245(2) Cr.P.C, there is no evidence available before him and the question of consideration of evidence does not arise. What is available before the Magistrate is only the complaint filed by the complainant and from that materials, the Magistrate has to consider whether the charge is groundless.

12. The Hon''ble Supreme Court Judgment, in Ajoy Kumar Ghose v. State of Jharkhand And Another reported in 2009(14)SCC 115, consider the scope of Section 245(2) Cr.P.C. has held as follows:-

"25. The situation under Section 245(2) Cr.P.C. is, however, different. There, under sub-Section (2), the Magistrate has the power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led. However, for discharging an accused under Section 245 (2) Cr.P.C., the

Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the Court or the evidence is led under Section 244 Cr.P.C. The words appearing in Section 245(2) Cr.P.C. "at any previous stage of the case", clearly bring out this position.

30. Under Section 244, on the appearance of the accused, the Magistrate proceeds to hear the prosecution and take all such evidence, as may be produced in support of the prosecution. He may, at that stage, even issue summons to any of the witnesses on the application made by the prosecution. Thereafter comes the stage of Section 245(1) Cr.P.C., where the Magistrate takes up the task of considering on all the evidence taken under Section 244(1) Cr.P.C., and if he comes to the conclusion that no case against the accused has been made out, which, if unrebutted, would warrant the conviction of the accused, the Magistrate proceeds to discharge him. 31. The situation under Section 245(2) Cr.P.C., however, is different, as has already been pointed out earlier. The Magistrate thereunder, has the power to discharge the accused at any previous stage of the case. We have already shown earlier that previous stage could be from Sections 200 to 204 Cr.P.C. and till the completion of the evidence of prosecution under Section 244 Cr.P.C. Thus, the Magistrate can discharge the accused even when the accused appears, in pursuance of the summons or a warrant and even before the evidence is led under Section 244 Cr.P.C., makes an application for discharge.

34. When the accused appeared in pursuance to the summons sent to him, under Section 244 Cr.P.C., the defence came out with an application. There can be no difficulty that the discharge application was perfectly in order at that stage. Therefore, what was available before the Magistrate besides this discharge application was, a bare complaint. There was absolutely nothing beyond the complaint available, for the Magistrate to consider the framing of charge. The Magistrate could, undoubtedly, have proceeded under Section 245(2) Cr.P.C., on the basis of discharge application and discharge him. However, he would have been required to give reasons for discharging at that stage, when no evidence or no material, whatsoever, was available with him, excepting a bare complaint.

Hence, at this stage, the Magistrate has to consider whether any prima facie case is made out by the complainant and whether the charge is groundless.

13. In the instant case, the respondent/complainant has filed a complaint for the offence under Section 58-B(4AAA) of RBI Act for non compliance of the order passed by the CLB. It is useful to refer the above Section:-

"(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-

compliance continues."

14. The specific case of the complainant is that the first accused company is a non banking finance company and the company collected deposits from various depositors, later failed to repay the said deposit amount with interest. Hence the depositors approached the CLB under Section 45QA(2) of the RBI Act for repayment of deposit. The Company Law Board passed orders on various dates, namely, 28.04.1998, 22.06.1998, 23.07.1998 and 05.10.1998, directing the first accused company, its Directors and concerned Officers to repay the deposit amount together with the contract rate of interest. In all the above orders, the CLB also directed the first accused company, its Directors and concerned officers shall ensure the compliance of the order within a stipulated period, but the accused failure to comply with the orders of CLB and committed offence.

15. The petitioners herein contended that when the above said orders were passed by CLB, they have resigned from the post of Directors of the first accused company with effect from 21.08.1998, and they have no obligation to obey the order of CLB. Even assuming the petitioners were resigned from the post of Directors on 21.08.1998, admittedly, they were holding the post of Directors till 21.08.1998, and during that tenure as Directors, the CLB passed three orders dated 28.04.1998, 22.06.1998 and 23.07.1998 directing the first accused company and its Directors to comply with the order. Then, there was a change in the Company and the present first accused company was incorporated and a new set of Directors were appointed on 01.12.1998. Subsequently, on 01.12.1998, the CLB issued another direction and the same reads as follows:-

"11. Keeping in view the interests of the depositors, the company and the public interest, I order as follows:-

(a) The Company shall pay interest at the contracted rate upto the date of maturity and thereafter from date of maturity till payment at 12 per cent per annum. In the event of failure by the company to make repayment as per the scheme approved by the CLB, over due interest shall be payable at 14 % per annum.

(b) The company shall pay interest in respect of deposits yet to mature at the contracted rate as per terms and conditions of such deposits.

(c) All deposits upto Rs.5000/- together with interest from the date of deposit till date of payment shall be paid in one instalment within a period of three months from the date of maturity or date of the order of the CLB whichever is later.

(d) All deposits of Rs. 5,001-10,000 together with interest from the date of deposit till date of payment shall be paid within 18 months from the date of maturity or date of the order of the CLB whichever is later at 50% of the principal amount with thereon in the second year.

(e) All deposits of Rs.10,000-15,000 together with interest from the date of deposit till date of payment shall be paid within 30 months from the date of

maturity or date of the order of the CLB whichever is later at 30% of the principal amount together with interest thereon during the first year, 35% of the principal amount together with interest thereon in the second year and balance of 35% of the principal amount together with interest thereon in the third year.

(f) All deposits above Rs.15,000 together with interest from the date of deposit till date of payment shall be paid within 33 months from the date of maturity or date of the order of the CLB whichever is later at 15% of the principal amount together with interest thereon during the first year, 40 per cent of the principal amount together with interest thereon in the 2nd year and balance of 45% of the principal amount with the interest thereon in the 3rd year.

(g) Notwithstanding the above -

(i) All deposits upto Rs.5000/- maturing during the year 2000 and onwards shall be paid together with interest thereon within one month from the date of maturity of such deposits;

(ii) All deposits of RS.5001-10000 maturing during the year 2000 and onwards shall be paid together with interest thereon in one instalment within four months from the date of maturity of such deposits.

(iii) All deposits above Rs.10,000/- maturing during the year 2000 and onwards shall be paid together with interest thereon in two equal instalments within nine months from the date of maturity of such deposits.

(h) The above scheme shall be applicable to all deposits, whether matured or yet to mature, and whether any application has been filed before the CLB or not, save the deposits in respect of which orders have been passed by this Bench on earlier occasions.

(i) The amount of none of the instalments in any of the above schedules shall be less than Rs.5000/- except the last instalment.

The CLB further directed some of the Directors of the new management to file an undertaking affidavit for repayment of deposits and also to make the company and every Directors including the officers of the company have jointly and severally responsible for the due compliance of the order. Since all the above orders were not complied with, the respondent/Reserve Bank of India filed a complaint for non compliance of the order passed by CLB under Section 45QA and 58-B(4AAA) of RBI Act.

16. The above complaint was filed for non compliance of all the five orders passed by the CLB, namely, the order dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 and 01.12.1998. Admittedly, when the orders were passed by the CLB on 28.04.1998, 22.06.1998 and 23.07.1998, all the petitioners were Directors of the first accused company and there is a specific direction issued by CLB to the first accused company and its Directors to comply with the order.

17. The contention of the learned counsel appearing for the petitioners is that the order dated 01.12.1998 is a comprehensive and consolidated order, in view of the latest order which is alone sought required to be implemented by the new management and in view of the latest order, the earlier orders passed by the CLB has no force and need not be complied by the erstwhile Directors.

18. From the perusal of complaint, it could be seen that the respondent/complainant filed the complaint not only for the violation of the order dated 01.12.1998, but also for the non compliance of the orders dated 28.04.1998, 22.06.1998 and 23.07.1998, and during that period admittedly the petitioners were directors of the first accused company, and prima facie case is made out against the petitioners.

19. As stated earlier while considering the application under Section 245(2) Cr.P.C. court has to consider only whether the charge is groundless and court cannot considered whether any case has been made out or not, as there is no evidence available before the Magistrate, while considering the application under Section 245(2) Cr.P.C. Now, after considering the material available on record, the learned Additional Chief Metropolitan Magistrate,(E.O.I), come to the conclusion that is a prima facie case has been made out the against the petitioner and dismissed the application and I find no illegality or irregularity in the order passed by the learned Chief Metropolitan Magistrate.

20. The next contention of the learned counsel appearing for the petitioners is that the petitioners were not in-charge and responsible to the affairs of the concerned company and no criminal liability could be fixed on them. But this question cannot be considered at this stage. The complaint has been filed by the respondent only for non compliance of the order passed by CLB, which is an offence under Section 58-B(4AAA) of the RBI Act. Since there is a specific direction issued by the CLB that the first accused company and its Directors irrespective of the fact that whether they are in-charge and responsible for the affairs of the company have to comply with the order, since the company and its Directors failed to comply with the order, the present complaint has been filed. Apart from that even in the complaint, necessary averments also made by the complainant that all the petitioners are in-charge and responsible to the affairs of the company and application of the provisions of Section 58C of RBI Act also cannot considered at this stage. In the above circumstances, the judgment relied on by the learned counsel appearing for the petitioners not relevance at this stage. In the above circumstances, this Court find no illegality or irregularity in the order passed by the Court below and there is no reason to interfere with the order of the Court below.

21. In the result, the criminal revision case is dismissed and the order dated 18.03.2011 passed in M.P. No.3050 of 2010 in E.O.C.C. No.14 of 2001 on the file of the learned Additional Chief Metropolitan Magistrate(E.O.I), Egmore, Chennai is confirmed.