(2014) 08 MP CK 0105

In the Madhya Pradesh High Court

Case No : M.Cr.C. No. 11485/2014

Shiv Raj Sharma APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Madhya Pradesh Nikshepakon Ke Hiton Ka Sanrankshan Adhiniyam, 2000 — Section 6
Penal Code, 1860 (IPC) — Section 120B, 409, 420
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 3, 4, 5, 6

Citation : (2014) 08 MP CK 0105

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Surendra Singh, Sr. Advocate, S.B. Vastava and Akhil Tiwari, Advocate for the Appellant; Vijay Pandey, Dy. Advocate General and Sumit Raghuvanshi, Advocate for the Respondent

Judgement

N.K. Gupta, J.—Heard the learned counsel for the parties.

2. This is repeat application on behalf of the present applicant. His earlier application was dismissed being withdrawn.

3. The applicant is in custody since 12.11.2013 in connection with Crime No.13/2013 registered at Police Station STF Bhopal for the offences punishable under Sections 420, 409, 120-B of IPC, Section 6 of MP Nikshepakon Ke Hiton Ka Sanranshan Adhiniyam, 2000 and Sections 3, 4, 5 and 6 of Prize Chit and Money Circulation Scheme (Banning) Act, 1978.

4. The learned counsel for the applicant has submitted relating to the activity of company namely M/s Care Concept Pvt. Ltd. for which the applicant was the Director. The sum and substance of the contention advanced by the learned Senior Counsel for the applicant is that the applicant was the Director of the concerned company and he was appointed as a promoter by the Oriental Insurance Company for a particular scheme of Nagrik Suraksha Policy. The

original Oriental Insurance Company was entitled to get the premium of Rs.258/-, and therefore if the applicant obtained some extra premium from the consumers to provide that facility on the ground that their insurance claim will be paid to them at their doors, and therefore a sum of Rs.2250/- was taken from the various customers. Since the applicant was in custody in a case pending before the Additional Chief Judicial Magistrate, Jaipur in the year 2011 and 2012, he could not deposit the various premiums to the Oriental Insurance Company and everything was shown clearly in the brochure, and therefore the applicant has not done any cheating with any of the consumer. He is in custody without any substantial reason.

5. The learned counsel for the applicant has also submitted relating to second company namely M/s Eve Miracle Pvt. Ltd. that it was constituted in the year 2009 and proposal was given to the public that if initially a person deposits a sum of Rs.5575/-, then as and when he deposits the remaining amount for purchase of gold, the same would be supplied to him and if such person makes a member in the company, then he would get some commission. The complainant Rajendra had also purchased gold of Rs.2,16,000/- against his deposit of Rs.22,920/- and also he received commission of more than Rs.7 lakhs. The scheme of the company was transparent and no cheating etc. was committed by the applicant. Under these circumstances, he prays for bail. It is further submitted that he is in custody since last one year.

6. On the other hand, the learned counsel for the State has submitted relating to the activities of the company namely M/s Care Concept Pvt. Ltd. that the applicant was appointed as a promoter and commission agent for a particular Insurance scheme by Oriental Insurance Company and the second company namely M/s Care Concept Pvt. Ltd. was not appointed as a promoter. Learned counsel for the State has shown the various documents which are receipts issued by the Oriental Insurance Company in which the I.D. of the concerned agent has been shown and in such I.D. a receipt was issued by exhibiting the name of the applicant as a individual commission agent and not a Director of a particular company. The learned counsel for the State has also pointed out the various conditions of the brochure to show that it was not mentioned clearly that what was the premium of the Oriental Insurance Company and services of insurance would be provided by the Oriental Insurance Company. When the applicant had obtained the commission from the Oriental Insurance Company on the premium paid by the concerned consumer, then he could not take any other sum from the consumers otherwise. The M/s Care Concept Pvt. Ltd. was not registered as an insurance company and without getting any registration as a commission agent or promoter, the applicant started business of collecting money from the public in general against the provisions of law and the terms of the contract with the Oriental Insurance Company. He obtained a huge amount in such a scheme by misrepresentation to the public in general and fraud. Therefore, a grave case is constituted against the present applicant.

7. The learned counsel for the State has also submitted relating to the company namely M/s Eve Miracle Pvt. Ltd. that a if a person deposits a sum of Rs.5575/- initially, then there was no advantage in depositing the sum with the applicant and his company, because neither any interest was given by the applicant on the deposited sum nor the applicant was selling the gold on the price of the date on which the original amount was deposited, and therefore there was no advantage to anyone to deposit a sum of Rs.5575/- with the applicant. On the contrary, the members were given a fraudulent apprehension that they would get some commission if they increase the members of that scheme. When there was no advantage in getting a sum of Rs.5575/-, then the amount deposited by a person was utilized by the applicant in his company and a little portion was given to the various members, who participated as commission agent in making more members, and therefore the applicant has not cheated only the various members, but also gave incentive to the persons, who cheated others for the applicant to make them members. Such type of scheme is prohibited under the Prize Chit and Money Circulation Scheme (Banning) Act, 1978 and there was no utility of that first deposit given by the member. Hence that scheme was nothing but collection of money by way of cheating. Looking to the gravity of offence, it is prayed that the applicant may not be released on bail.

8. The learned counsel for the objector has also submitted about both the companies in detail in the tune of the arguments as made by the learned counsel for the State. He has invited the attention of this Court to the order dated 6.5.2014 passed by Hon''ble the Apex Court in Writ Petition (Criminal) No.57/2014 and has submitted that the applicant along with other promoters collected a huge amount from the various consumers against the terms and conditions of the contract with the Insurance Company and against the public policy. No advantage was given to the consumer in such a scheme. The other Directors of the company are absconding and if the applicant is released on bail, he may also escape. Under such circumstances, it is prayed that the applicant may not be enlarged on bail.

9. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, without expressing any opinion on the merits of the case, I am of the view that looking to the gravity of offence, it is not a fit case in which the applicant may be enlarged on bail.

10. Consequently, the application of the present applicant namely Shiv Raj Sharma under Section 439 Cr.P .C. relating to aforesaid crime is hereby dismissed.