

(1978) 12 MAD CK 0020

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 6113 of 1977

Sree Visalam Chit Fund Ltd. and Others

APPELLANT

Vs

N. Krishnamurthy Rao, Deputy Chief Officer, Department of
Non-Banking Companies, Reserve Bank of India

RESPONDENT

Date of Decision : 01-12-1978

Acts Referred:

Reserve Bank of India Act, 1934 — Section 45I, 45K, 45L, 58B(5), 58B(6)

Citation : (1978) 12 MAD CK 0020

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : M. Karpagavinayagam, Government Advocate No. III Criminal Side,
T.V. Natarajan, for the Appellant; S. Ramasubramaniam, for King and Patridge,
for the Respondent

Final Decision : Dismissed

Judgement

Suryamurthy, J.—This is a petition u/s 482 of the Code of Criminal Procedure to quash the proceedings in C. C. No. 254 of 1977 on the

file of the Chief Judicial Magistrate, Tirunelveli.

2. The petitioners are M/s. Sree Visalam Chit Fund Ltd. represented by its managing director and the directors of the said chit fund. The

respondent filed a complaint in the court of the Chief Judicial Magistrate, Tirunelveli, under Sections 58B(5) and (6) and 58C of the Reserve Bank

of India Act, 1934 (hereinafter called "" the Bank Act ""), and u/s 190, Clause (1), of the Cr. P. C. 1973, against the petitioners on the allegation

that the first petitioner accepted deposits from a proprietary concern in excess of the stipulated limits set out in the directions issued under the Bank

Act by the Reserve Bank of India. The case was taken on file as C.C. No. 254 of 1977. The petitioners filed Crl. M.P. No. 774 of 1977, raising

a preliminary objection to the maintainability of the complaint. The respondent countered the preliminary objection. The contention of the petitioner

in this court as well as before the learned Chief Judicial Magistrate was that the first petitioner is a financial institution as defined in Section 45-I(c)

of the Bank Act and not a non-banking institution within the meaning of the Bank Act, that only non-banking institutions are interdicted from

receiving deposits, that financial institutions have not been placed under any such disability, that, therefore, the respondent to whom powers have

been delegated by the Reserve Bank of India u/s 58E of the Bank Act to take cognizance of the offences committed by non-banking institutions,

has no power to lay the complaint, and that, in any event, no offence has been committed by the first petitioner receiving deposits, as the first

petitioner is only a financial institution, and not a non-banking institution.

3. The respondent contended that the first petitioner is both a non-banking institution as well as a financial institution and, therefore, an offence has

been committed by the first petitioner in receiving the deposits in violation of the directions of the Reserve Bank.

4. Section 2(aii) of the Bank Act defines "the bank" as the Reserve Bank of India constituted by the Bank Act. Section 45-I(c) defines "financial

institution" as any non-banking institution which carries on as its business or part of its business any of the following activities, namely :

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own ;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a

like nature ;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in Clause (c) of Section 2 of the Hire Purchase Act,

1972 ;

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time

being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of

subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing

monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which,--

(i) is an industrial concern as defined in Clause (c) of Section 2 of the Industrial Development Bank of India Act, 1964, or (ii) carries on as its

principal business,--

(a) agricultural operations, or

(b) the purchase, or sale of any goods (other than securities) or the providing of any services, or

(c) the purchase, construction or sale of immovable property, so however, that no portion of the income of the institution is derived from the

financing of purchases, constructions or sales of immovable property by other persons.

5. Therefore, the first petitioner, who is conducting a chit, is a financial institution. It can be treated as a financial institution within the meaning of

Section 45-I(c) only if it is also a non-banking institution, which is defined in Section 45-I(e) of the Bank Act, as "" a company, corporation, co-

operative society or firm "". If the first petitioner is not a non-banking institution, it will not be covered by the definition of a financial institution

referred to above. Therefore, there can be no doubt about the fact that the first petitioner, which is a limited company, is a non-banking institution

as well as a financial institution.

6. Section 45J of the Bank Act empowers the bank:

If it considers necessary in the public interest so to do, by general or special order,--

(a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public;

and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

7. Section 45K of the Bank Act lays down :

(1) The bank may at any time direct that every non-banking institution shall furnish to the bank, in such form, at such intervals and within such

time, such statements, information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified

by the bank by general or special order.

(2) Without prejudice to the generality of the power vested in the bank under Sub-section (1), the statements, information or particulars to be

furnished under Sub-section (1), may relate to all or any of the following matters, namely, the amount of the deposits, the purposes and periods for

which, and the rates of interest and other terms and conditions on which, they are received.

(3) The bank may, if it considers necessary in the public interest so to do, give directions to non-banking institutions either generally or to any non-

banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits,

including the rates of interest payable on such deposits, and the periods for which deposits may be received.

(4) If any non-banking institution fails to comply with any direction given by the bank under Sub-section (3), the bank may prohibit the acceptance

of deposits by that non-banking institution.....

(6) Every non-banking institution receiving deposits shall, if so required by the bank and within such time as the bank may specify, cause to be sent

at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person

from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be

specified by the bank.

8. The first petitioner, as noted already, is a non-banking institution as well as a financial institution. The third petitioner was a director during the

material period. Petitioners Nos. 2, 4 and 5 are and have been the directors of the first petitioner-company at all material times. The second

petitioner is and has always been the managing director of the first petitioner-company. Directions have been issued in exercise of the powers

vested in the Reserve Bank of India by Sections 45G and 45K of the Bank Act. The directions are said to have come into force with effect from

1st September, 1973, expressly providing that,

On and from the 1st September, 1973--(a).....

(b) no miscellaneous non-banking company shall receive any deposit, which together with any other deposits falling under the same category (as

specified hereinafter), already received and outstanding on the books of the company, is in excess of the limits hereinafter specified in respect of

each of the following categories of deposits, namely :--

(i) in the case of a deposit received against an unsecured debenture, or from a shareholder (not being a deposit received by a private company

from its shareholder on a declaration as is referred to in the proviso to Sub-clause (vi) of Clause (d) of sub-paragraph (1) of paragraph 3) or a

deposit guaranteed by a person, who, at the time of giving of the guarantee was or is a director of the company, twenty-five per cent. of the

aggregate of the paid-up capital and free reserves of the company. "" : (This 25 per cent. has of course been subsequently reduced to 15 per cent.

from January 27, 1975).

(ii) in the case of any other deposit, twenty-five per cent. of the aggregate of the paid-up capital and free reserves of the company.....

A proviso to this paragraph stated that "" deposit "" in Clause (b) of the paragraph did not include any loan which was "" secured by the creation of a

mortgage or pledge of the assets of the company or any part thereof "" if there was at least a margin of 25 of per cent. of the market value of the

assets offered as security for the loan.

9. The complaint against the first petitioner-company is that the loans which it has received both before and after September 1, 1973, from Sree

Visalam Financiers (of which the 2nd accused is the proprietor) constitute "" deposit "" as defined in para. 3(1)(d) of the said directions and hence

they would ipso facto be deposits for the purpose of the provisions relating to the limit and restrictions imposed by para. 4(b)(ii), that the benefit of

the first proviso to para. 4(b) will not be available to the first petitioner-company inasmuch as the deed dated February 19, 1973, which is claimed

to provide the security for the loan is neither a mortgage nor a pledge over the assets of the company, but is admittedly a floating charge over the

book debts of the company which has altogether different legal incidents from that of a mortgage or pledge, that even if construed either as a

mortgage or as a floating charge, the deed dated February 19, 1973, does not create any security value at all and is wholly illusory as the same

book debts are already subject to two prior charges, that the creation of a charge over the same to which the debtors themselves are not parties

and notice of which has also not been served upon there is absolutely illusory, and that the first petitioner has received and continues to receive

deposits in contravention of para. 4(b)(ii) of the said direction issued by the Reserve Bank of India under Chap. III-B of the Bank Act and has

also failed to comply with the directions contained in para. 5(i) of the said directions by not regularising the excess deposits. It is, therefore, alleged

that the first petitioner is liable to be punished u/s 58B(5) and (6) of the Bank Act and that the petitioners Nos. 2, 4 and 5 who are and have been

the managing director and directors, respectively, at all material times, and the third petitioner, who was a director till 14th October, 1976, and,

therefore, during the material period when the contravention was made and defaults committed, was in charge of and responsible to the first

petitioner for the conduct of its business, are liable to be proceeded against and punished u/s 58B(5) and (6) read with Section 58C(1) of the

Bank Act. The Reserve Bank of India has delegated the power to make the complaint as mentioned in Section 58E of the Bank Act for an offence

punishable u/s 58B and other provisions of Chap. III-B thereof relating to the non-banking institutions to the complainant herein and other officers

of the Reserve Bank of India in Order No. 5/1975, dated 6th October, 1975, which has been published in the Gazette of India, Pt. III, Section 4,

dated 8th November, 1975.

10. The contention of the petitioners is that the Act has recognised and maintained a difference between non-banking institutions and financial

institutions, that only non-banking institutions cannot receive deposits, that financial institutions are under no such liability, and that the provisions of

Section 45L of the Bank Act, and not the provisions of Section 45K, are applicable to the first petitioner. Section 45L of the Bank Act lays down

that:

(1) If the bank is satisfied that for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do, it

may-

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the bank in such

form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or

institution, as may be specified by the bank by general or special order ;

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as

financial institutions or institution.

11. The contention of the petitioners is fallacious. Section 45K applies to all non-banking institutions including financial institutions. By Section 45L,

the Reserve Bank has been empowered to do the acts or pass the orders contemplated therein only in respect of financial institutions. The power

conferred on the bank u/s 45L is a wider power in respect of financial institutions. The power thus conferred u/s 45L cannot be exercised in

respect of any non-banking institution, except a financial institution. By reason of Section 45K, the bank may, by general or special order, exercise

the powers conferred thereunder in respect of any non-banking institution including a financial institution. Therefore, the provisions of Section 45K

as well as Section 45L of the Bank Act are applicable to a financial institution. In other words, powers have been conferred u/s 45L of the Bank

Act on the Reserve Bank to regulate the business of a financial institution and to do the other acts referred to therein in addition to the power

conferred by Section 45K to give the directions contemplated therein to every non-banking institution, including a financial institution. Therefore,

there is no substance in the contentions of the petitioners.

12. The provisions relating to financial institutions which include chit funds of the type conducted by the petitioners have been incorporated in the

Act by the legislature in its wisdom to prevent chit funds becoming cheat funds, which not uneaten they do, and to protect the unwary subscribers

and other members of the public who may have dealings with such funds. The petitioners cannot derive any consolation from the scheme of the Act

and the purpose for which the relevant provisions of the Act referred to above have been enacted. There is no substance in any of the contentions

of the petitioners.

Hence, this petition is dismissed.