(2013) 12 AP CK 0092

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 941 of 2006

Syed Taruj Ahmed APPELLANT

Vs

The State of A.P. RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 2 ALD(Cri) 18

Judgement

S. Ravi Kumar, J.—This revision is preferred against the Order in Crl. M.P. No. 349 of 2005 in C.C. No. 6 of 2004 on the file of the Metropolitan Sessions Judge, Hyderabad, wherein the discharge petition filed by the revision petitioner herein was dismissed.

The brief facts leading to this revision are as follows:

(a) The revision petitioner filed discharge petition contending that on 18.12.2002, Mohammed Raza lodged a complaint stating that on seeing the advertisement in leading Urdu Newspapers, Munisf Daily and Siasat Daily, he was lured by the higher dividend in the name of Halal Munafa offered by the accused''s financial establishment, by Rs. 80,000/- and he was informed by the accused that the deposits made in the accused company are safe and have been guaranteed by the Reserve Bank of India and he received dividend of Rs. 250/- per month from the accused on the amount of Rs. 10,000/- for March, 1999. As he failed to pay the dividend from the month of April, 1999, he approached the branch office as well as the corporate office located at Lower Tank Bund, there he found both the offices were locked basing on which, a complaint was registered by the Crime Investigation Department police and took up investigation and investigation revealed that the accused without registering the financial institution with the appropriate authority and without getting permission from the Reserve Bank of India to do business of N.B.F.C. and made the general public to believe that he made registration with the appropriate authority and according to the petitioner, due to some tiring incidents in the city and else where in March, 1999, the investors of the accused company made a belief and demanded to return their premature investments. The accused company could not pay the money of investors as the demand was increasing and the office was ransacked and taking advantage of the same, the police officials were also acting as recovery agents and some other anti social elements were threatening the accused and his family members. In those circumstances, the accused filed a W.P. No. 9502 of 1999 on 27.04.1999 before this Court contending that he is willing to make the payments to his investors and prayed the Court that his assets can make good payments, as such the Court appointed Advocate Receiver to take over the administration of the accused companies namely; Franzaan & Company, Franzaan Enterprises and two other companies. In compliance of the direction of the Hon''ble Single Judge of this Court, the Advocate Receiver took over the administration of the accused companies and also took over all the records, documents and was managing the affairs of the accused company and the Advocate Receiver gave a notice in the news papers on 20-09-1999 to file claims in respect of the accused companies in person or through post. During the said proceedings, the investors'' association impleaded in the W.P. No. 9502 of 1999 and also filed claims before the Advocate Receiver. The association also filed W.P. No. 19520 of 1999 before this Court to seize all the assets of the financial company and the said Writ Petition was clubbed with the Writ Petition filed by the accused. Later, the Investors'' Association filed L.P.A. No. 220 of 2000 before the Division Bench challenging the orders passed by Hon''ble Single Judge. The Division Bench has passed order disposing the L.P.A. and Writ Petitions with certain directions. The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (herein after referred to as ''the Act 1999'') was promulgated and came into effect from 01-11-1999. Whereas, the accused approached this Court and filed the W.P. No. 9502 of 1999 on 27.04.1999 for appointing Advocate Receiver to take over the administration of the accused''s financial companies and therefore, it is clear that the accused was not at the helm of affairs during the said period as such it has to be construed that the accused''s financial companies were under the control and custody of the this Court till the orders of the Division Bench passed on 13.11.2000. Till the date of filing of the complaint by the defatcto-complainant on 18.12.2000, the police authorities have not taken any steps to investigate into the matter. The defacto-complainant has filed the complaint after a gap of four years only to harass the accused. The allegations did not constitute the offence under the Act 1999. The said Act has no retrospective effect as such the accused may be discharged from all the offences alleged against him.

(b) The State through Special Public Prosecutor filed counter contending that basing on the complaint of Mohd. Raza, a case in Crime No. 31 of 2002 was registered by the Crime Investigation Department and investigated into and filed the charge sheet against the accused for the offences under Sections 406 and 420 of Indian Penal Code and u/s 5 of the Act 1999 and u/s 45S read with Section 58B(5)(a) of the Reserve Bank of India Act, 1934 (herein after referred to as ''the Act 1934''). The allegations made by the petitioner are false. The orders passed by this Court are binding on the accused. This Court has categorically held that the complaints filed by the various investors should be disposed of under the Act 1999, as such the petitioner is restrained to take plea that the said Act is not applicable to him. The contention of the petitioner has no basis and he has no case in view of the disposal of L.P.A. No. 220 of 2000 by this Court. The appointing of Advocate Receiver and took over the administration of the accused''s financial companies is quite different from the criminal proceedings. The investigation done so far established that the accused floated M/s. Franzaan and Company which is an unincorporated body and conducted business as NBFC without permission from the Reserve Bank of India and violated the provisions of Section 45 of the Act 1934. Thus, the investigation done so far prima facie established against the accused and the material is sufficient to frame charges against the accused. As such, the petition is liable to be dismissed.

2. On a consideration of contentions and rival contentions of both parties, the learned Metropolitan Sessions Judge dismissed the petition and aggrieved by the same, the present revision is preferred.

3. Heard both sides.

4. The main argument of the Advocate for revision petitioner is that the provisions of Act 1999 has no application to the case on hand as those provisions cannot have retrospective effect since the allegations of deposit is long prior to the Act 1999 came into force.

5. On the other hand, learned Public Prosecutor contended that it is a continuing offence and date of deposit is not the relevant factor but date of maturity is to be taken into consideration and maturity date of most of the deposits is long after Act 1999 came into force. He further submitted that police investigated the case as per the directions of Division Bench of this Court, which also directed to apply provisions of Act 1999, therefore, the objection of the revision petitioner is not tenable.

6. Now the point that would arise for my consideration in this revision is whether the impugned Order of the Court below is legal, correct and proper?

7. Point:-The main argument of the Advocate for revision petitioner is that since the provisions of Act 1999 cannot have retrospective effect, the charge under the provisions of that Act cannot be sustained and petitioner is not challenging with regard to IPC offences. Learned Advocate for revision petitioner cited the following decisions to support his contentions criminal cannot have retrospective effect:-

In Kanchi Raju Venkata Ramana v. State of Andhra Pradesh and another 2008 (3) ALT (Crl.) 229 (A.P.) : 2008 (2) ALD (Crl.) 351 (A.P.), Gourishetty Prabhakar Vs. State of Andhra Pradesh and Another, , Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, , State of Madhya Pradesh and others Vs.

Rameshwar Rathod, , Arjan Singh and Another Vs. The State of Punjab and Others, and Keshavan Madhava Menon Vs. The State of Bombay, .

8. On the point that penal provisions will have only prospective effect and they do not have retrospective effect. Learned Public Prosecutor has not disputed the principles laid down in the above decisions and also as to the point that penal provisions will have only prospective effect and cannot be applied retrospectively unless the Act specifically provides. But his contention is that since the offence alleged against the petitioner under the provisions of Act 1999 is a continuing offence and maturity date of most of the deposits is subsequent to the Act came into force, therefore, charge under the provisions of Act 1999 is very much legal.

9. As rightly pointed out by the learned Public Prosecutor that a Division Bench of this Court in L.P.A. No. 220/2000 in W.P. No. 9502/1989, W.P. No. 19520/1999 and W.P. No. 16909/1999 directed the police to give protection to the personal property of writ petitioner in W.P. No. 9502 of 1999 if needed on payment of necessary charges and further directed the officials to proceed in the matter and dispose of the complaints filed by various investors in accordance with law. It is also observed that an Act has been promulgated being the A.P. Protection of Depositors of Financial Establishments Act 1999 and directed the competent authority under the Act 1999 to proceed in the matter in accordance with law.

10. It is also clear from the record that prior to the above referred directions of the Davison Bench, the properties of the financial institutions have been taken over by an Advocate Receiver as per the orders of this Court, but the Division Bench directed the Advocate Receiver to return back the properties to the person or persons from whom those properties were taken. Admittedly, the revision petitioner is charged with IPC offences punishable under Sections 406 and 420 IPC besides offence u/s 5 of Act 1999 and also offences under the Act 1934. From the material on record, it is clear that offence alleged against the petitioner is a continuing offence and maturity date of some deposits is only after Act 1999 came into force i.e., after 01-11-1999. The learned Metropolitan Sessions Judge, considering the material on record, observed that the cause of action survives for the investors till they recover the amount from the financial institutions as such the offence is a continuing offence and provisions of Section 5 of the Act 1999 squarely applies to the case on hand. One of the point urged on behalf of the revision petitioner is to attract the provisions of Section 5 of the Act 1999, date of agreement is crucial and in this case even according to prosecution, the agreement with the financial institution is long prior to the Act 1999 came into force, therefore, Section 5 of the Act 1999 cannot be invoked but the contention of the Advocate for revision petitioner cannot be accepted because as rightly pointed out by the learned Public Prosecutor date of maturity is crucial for invoking provisions of Section 5 of the Act 1999 since maturity date of most of the deposits is subsequent to the date on which Act 1999 came into force, the objection of the revision petitioner cannot be sustained.

11. As seen from the record, several innocent investors are involved and on

account of the stay obtained by the revision petitioner to proceed with the trial of the case their money is blocked. The charge sheet is filed in the year 2004 and discharge petition is dismissed on 23-02-2006 and the revision is filed in the year 2006 and the matter is sufficiently dragged for seven years by obtaining interim suspension of the order of the Court below. Since already long delay is caused, I feel that the trial Court has to be directed to take up the case on priority basis and dispose it of as expeditiously as possible.

12. With this direction, the Criminal Revision Case is dismissed as devoid of merits. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed.