(2011) 01 MAD CK 0209

In the Madras High Court

Case No : Contempt Petition No. 12 of 2001

V. Thirunavukkarasu, Managing Director — APPELLANT

Vs

Mrs. Shobana, I.A.S. — RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Tamil Nadu Protection of Interests of Depositors in (Financial Establishments) Act, 1997 — Section 13, 3, 4, 4(1)(2)(5), 5

Citation : (2011) 01 MAD CK 0209

Hon'ble Judges : S. Nagamuthu, J;D. Murugesanand, J

Bench : Division Bench

Advocate : P. Rajamanickam, for the Appellant;

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—Seeking to punish the Respondent, who is the competent authority under The Tamil Nadu Protection of Interest of

Depositors (In Financial Establishments) Act, 1997 and the District Collector of Chennai on the allegation that she has disobeyed the order of the

Court dated 13.04.2010 in Crl.M.P. No. 1976 of 2009 in C.C. No. 11 of 2000 passed by the learned Special Judge under the "" The Tamil Nadu

Protection of Interest of Depositors (In Financial Establishments) Act, 1997 [herein after referred to as ""the Act""] "", the Petitioner has come up

with this contempt petition.

2. The Petitioner was doing the business under the name and style of Thirumuruga Finance at No. 73, Rang Nathan Street, T. Nagar, Chennai

from 15.04.1995 onwards. During the course of business, the Petitioner collected deposits from the public on the assurance to repay the same

with interest, but he failed to do so. On a complaint made by a depositor, a criminal case was registered in Cr. No. 158 of 1998 by the Inspector

of Police, EOW-II, and Chennai which culminated in the final report in C.C. No. 11 of 2000 on the file of the Special Judge under the Act.

3. According to the final report, the Petitioner had collected a total sum of Rs. 1, 21, 18,900/-from 454 depositors. On the ground that the

Petitioner had paid back the deposited amount and that the depositors also gave evidence to that effect, the Special Judge by order dated

06.04.2006 in Crl.M.P. No. 312 of 2006 directed the Competent Authority cum District Revenue Officer, Chennai to compound the offence u/s

5-A of the Act for the entire 229 counts. But, the Respondent by order dated 06.04.2006 recorded compounding of the offence in respect of 153

depositors, but declined to compound the offence in respect of 76 depositors. Thereafter, the Petitioner filed Crl.M.P. Nos. 3564 of 2008 and

1976 of 2009 seeking a direction to the Respondent to compound the offence in respect of all those 76 depositors also. On considering the said

petition, the learned Special Judge by order dated 13.04.2010 issued the following directions :

11. Accordingly , the petitions are allowed and thereby the Competent Authority is directed to compound the offence u/s 5A of TNPID Act , in

respect of the remaining depositors, except whose cases are pending before the Hon''ble Superior Courts and the depositors subsequently settled

in the light of the orders passed in I.A. No. 44 of 2000 in O.A. No. 12 of 1999 dated 19.01.2005 and Crl.M.P. No. 312 of 2006 dated

06.04.2006 after observing all the legal-formalities required under law and file a report / order to that effect. The Petitioner is directed to deposit

the deficit amount, if the amount available with the competent authority is not sufficient, and also produce the relevant certified copies of the

depositions of the witnesses/depositors recorded and the documents exhibited through them in I.A. No. 44 of 2000 in O.A. No. 12 of 1999

before the Competent Authority.

4. Subsequent to the above order, the Respondent by her proceedings in R. No. J8/89339/2000 dated 15.10.2010 passed an order declining to

compound the offence fully in respect of 76 depositors except 22 depositors. The competent authority held that the offence in respect of one

depositor by name S.A. Edward could not be compounded in view of the order of this Court in Crl.O.P. No. 27712 of 2007 and M.P. No. 1 of

2007 dated 10.03.2010. The Respondent further held that in respect of 21 depositors who claimed the Government Rate of Interest and court

expenses along with principal amount also, the offence could not be compounded. Hence, the Respondent requested the Special Judge under the

Act to pass a specific order.

5. According to the Petitioner, the above order of the Respondent declining to compound the offence in respect of 22 depositors amounts to

contempt. That is how, the Petitioner is, now, before this Court with this contempt petition.

6. We have heard the learned Counsel for the Petitioner and also perused the record.

7. Before going into the facts of the case, it is worthwhile to refer to the salient provisions of The Tamil Nadu Protection of Interests of Depositors

(In Financial Establishments) Act, 1997. Sub-section (1) of Section 2 of the Act defines the competent authority as the authority appointed u/s 4 of

the Act. Section 4 of the Act empowers the State Government to appoint appoint one or more authorities for such area or areas or such case or

cases as may be specified in the notification to be the competent authority to exercise control over the properties attached by the Government u/s 3

of the Act by means of a notification. In the instant case, the Respondent has been so appointed as the competent authority.

8. Section 3 of the Act empowers the Government to pass an interim order attaching the properties of the defaulter in certain contingencies as

enumerated in the said provision. u/s 4 of the Act, the competent authority has been empowered to make an application to the special court

constituted under the Act within 30 days for making the ad-interim order of attachment absolute. Similarly, Sub-Section 5 of Section 4 of the Act

mandates that the competent authority shall make an application to any court having jurisdiction to try similar cases or deal with the subject matter

pertaining to money or property belonging to a Financial Establishment or any person specified in Section 3 situated within the territorial jurisdiction

of that court for appropriate orders.

9. Section 5 of the Act is the penal provision which states that notwithstanding anything contained in Sections 3 & 4 of the Act, every person

responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to

ten years and with fine which may extent to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh

of rupees. As per Section 13 of the Act, an offence u/s 5 of the Act shall be tried only by a Special Court constituted u/s 6 of the Act and the

Special Court shall be deemed to be a Magistrate for the purposes of the Act.

10. Section 5-A of the Act was introduced by means of an amendment with effect from 10.11.1993 empowering the competent authority to

compound the offence punishable u/s 5-A of the Act. Now, let us have a glance through Section 5-A of the Act which reads as follows.

5A. Compounding of offence . -(1) An offence punishable u/s 5 may, before the institution of the prosecution, be compounded by the Competent

authority or after the institution of the prosecution, be compounded by the competent authority with the permission of the Special Court, on

payment of the entire amount due to the depositors with or without interest.

(2) Where an offence has been compounded under Sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or

continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.

11. A close look into the above provision would make it abundantly clear that the competent authority is empowered to compound the offence by

itself before the institution of the prosecution u/s 5A of the Act. On the other hand, after the institution of the prosecution, offence can be

compounded by the competent authority only with the permission of the Special Court. In any event, such compounding can be made only on

payment of the entire amount due to the depositors with or without interest. Further, such compounding is made by means of a quasi judicial order

passed by the competent authority. It is for the competent authority to satisfy itself as to whether the entire amount due to the depositors either with

or without interest has been paid or not by the defaulter / accused. It is only for the competent authority to even dispense with the payment of

interest and to allow compounding of offence. Here, the competent authority is not a party against the defaulter / accused. The competent authority

acts as an independent statutory authority to adjudicate upon the issue as to whether the entire amount has been paid with or without interest and

then to record compounding. For this, the depositor(s) and the defaulter are to be heard and then only the issue could be adjudicated upon by the

competent authority. As against the above adjudicatory power of the competent authority, the role of the Special Judge comes into picture only in

a case where after having decided to compound the offence, when the competent authority makes a request to the Special Judge for permission to

so compound in a pending case. Before granting such permission, the Special Judge may consider the report of the competent authority to see

whether the entire amount has been paid as required u/s 5A of the Act and then to grant permission. Thus, such an application for permission for

compounding of the offences can be filed only by the competent authority and for that purpose, the Special Judge cannot entertain any application,

either from the depositor or defaulter / accused seeking a direction to the competent authority to compound the offence u/s 5A of the Act. Thus, it

is crystal clear that the Special Judge has no power to issue any direction to the competent authority to compound the offence.

12. When this was pointed out, the learned Counsel appearing for the Petitioner submitted that it is the practice in the Court of the Special Judge

under the Act at Chennai where it is only the defaulters / accused, who file petitions and such petitions are heard and then appropriate directions

are issued to the competent authorities for compounding the offence. If it is true, the said practice cannot be approved as the same is contrary to

the provisions of the Act and so, it is high time that such practice is discontinued forthwith.

13. The learned Counsel for the Petitioner would , however, submit that the competent authorities do not in general approach the Special Judge

with any request seeking permission for compounding the offence as required u/s 5A of the Act. In our considered opinion, whenever any petition

is filed by the defaulter / accused or the depositor (s) for compounding the offence, it is for the competent authority to adjudicate upon the same in

terms of Section 5A of the Act and as we have already stated, if it is in respect of a case in which prosecution has already been instituted, the

competent authority shall after having recorded its decision to compound the offence should file appropriate petition before the Special Judge for permission. If the competent authority fails to act in accordance with Section 5A of the Act, the remedy for the defaulter / accused lies elsewhere

but not by filing a petition before the Special Judge seeking a direction to the competent authority.

14. Having taken note of the above legal position, the learned Counsel for the Petitioner would submit that the order of the learned Special Judge

dated 13.04.2010 may be construed only as a permission in terms of Section 5-A of the Act and not as a direction. If the said order is so

construed as ""only a permission"" as it is now suggested by the learned Counsel for the Petitioner, then question of contempt does not arise. If only

the order is construed as a direction, then comes the question of contempt. These apart, in the instant case, the competent authority has filed

another petition before the Special Judge for appropriate clarification. This shows that there is no disobedience of the order by the Respondent. If

the Petitioner has got any grievance regarding the order of the Respondent dated 15.10.2010, it is always open for him to workout his remedies in

the manner known to law.

15. In view of the above, we do not find any merit in the contempt petition. The contempt petition fails and the same is accordingly dismissed.

