
Smt. Rebecca and 2 others Vs State

Criminal O.P.No. 16296 of 1999

Court: Madras High Court

Date of Decision: Dec. 7, 1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 161#Essential Commodities Act, 1955 " Section 10, 3#Penal Code, 1860 (IPC) " Section 120#Prize Chits and Money Circulation Schemes Banning Act, 1978 " Section 2(3), 4, 5, 6#Reserve Bank of India Act, 1934 " Section 45

Citation: (2001) 103 CompCas 810 : (2000) 2 CTC 653

Hon'ble Judges: P.D. Dinakaran, J

Bench: Single Bench

Advocate: Mr. P. Rajamanickam, for the Appellant; Mr. N.R. Elango, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioners seek to quash the charge made in C.C.No.8 of 1998 on the file of the Special Court constituted under Tamil Nadu Protection of

Interest of Depositors Act, 1997 (hereinafter referred to as the Act).

2. According to the petitioners, even though they are partners of a firm called Omega Commercial Credits and Investments, having office at 18,

South Boag Road, T. Nagar, Madras 17, they are not active partners of the said firm not they participate in any of the affairs or business of the

firm, such as collecting the deposits, etc., on behalf of the firm.

3. The learned counsel for the petitioners contends that neither the FIR lodged by one D.V. Ramana Reddy, residing at 3, 4th Circular Road,

Jawahar Nagar, Madras 82, nor the statements recorded u/s 161, Cr.P.C. in pursuance of the said FIR, discloses any allegation against the

petitioners.

4. Even though it is complained that the said company arrayed as A1 and its managing partner arrayed as A2, who is nonetheless the husband of

the petitioners 1 and 2 herein and brother of the third petitioner herein, namely A3, A4 and A5, said to have committed the above crime, viz., by

collecting the deposits from the general public to the tune of Rs.53,49,466.25 and thereafter, closed the business and absconded, which is

punishable u/s 120B and 420, IPC, the learned counsel for the petitioner further contends that there is no material either in the FIR or in the

statements obtained u/s 161, Cr.P.C. to constitute an offence u/s 420 read with Section 120B, IPC, much less u/s 4, 5 and 6 of Tamil Nadu Price

Chits and Money Circulation Scheme Banning Act, 1958 (herein after referred to as the Chits Act).

5. The learned counsel for the petitioners also contends that the charge sheet should prima facie disclose the averment in the FIR and in the

statements obtained u/s 161, Cr.P.C. to constitute an offence punishable u/s 4, 5 and 6 of the Chits Act, In the absence of any such averment in

the FIR or in the statement obtained u/s 161, Cr.P.C., the petitioners could not be charge sheeted for the offence punishable under Sections 4, 5

and 6 of the Chits Act.

6. Placing reliance on the decision in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, and in Sham Sunder and Others Vs.

State of Haryana, , learned counsel for the petitioners contends that the charges framed against the petitioners are liable to be quashed as they have

not either participated or connected with any of the business and affairs of the firm, even as per the FIR and the statement obtained u/s 161,

Cr.P.C.

7. Per contra, Mr. N.R. Elango, learned Government Advocate, while fairly conceding that there is no allegation against the petitioners, either in

the FIR or in the statement obtained u/s 161, Cr.P.C., contends that the petitioners are still chargeable for criminal conspiracy, punishable u/s

120B read with 420, IPC and Section 4,5, and 6 of the Chits Act. In this regard, he places reliance on the decision State v. Nalini, 1999 SCC

(Cri.) 691 and Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, .

8. I have bestowed my careful consideration to the submissions of both sides.

9. In Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , the Apex Court has held that proceedings against an accused can be

quashed in the initial stage, only, if on the face of the complaint or the papers accompanied with the same, no offence is constituted. In other

words, the test is that taking the allegations and the they are without adding or subtracting anything, if no offence is made out then the High Court

will be justified in quashing the proceedings in exercise of its powers u/s 482.

10. Admittedly, in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, ; the directors were not charged for criminal conspiracy,

punishable u/s 120B, IPC. Therefore, finding no offence constituted on the face of the complaint, while dealing with the case of adulteration under

the provisions of the Prevention of Food Adulteration Act, the Apex Court found that there was no whisper nor shred of evidence no anything to

show, apart from the presumption drawn by the complainant that there is an act committed by the directors, from which a reasonable inference

could be drawn, that could also be vicariously liable and consequently, held that no case against the directors was made out ex facie on the

allegation made in the complaint and the proceedings were accordingly quashed.

11. In Sham Sunder and Others Vs. State of Haryana, , the Apex Court, while interpreting the offence punishable u/s 10 of the Essential

Commodities Act (hereinafter referred to as the EC Act), has held that there is no vicarious liability in the criminal law and Section 10 of the EC

Act does not make all the partners liable for the offence, whether they do the business or not, because more often it is common that some of the

partners of the firm may not even know what is going on day to day in the firm and it would be a travesty of justice to prosecute all the partners

and ask them to prove that the offence was committed without their knowledge.

12. Sham Sunder and Others Vs. State of Haryana, , is one which deals with the offence punishable u/s 10 of the EC Act. Section 10 of the

Essential Commodities Act reads as follow:

10. Offences by companies - (1) If the person contravening an order made u/s 3 is a company, every person who, at the time of contravention

was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company,

shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took

place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub- section(1) where an offence under this Act has been committed by a company and it is proved that

the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary

or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be

liable to be proceeded against and punished accordingly.

13. As per clause 10(2) of the EC Act, the burden is shifted on the prosecution to show that the offence has been committed with the consent or

connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company and in such case, the

director, managers, secretary or other officers shall also be deemed to be proceeded against and punished accordingly. Thus, while dealing with

the case charged, punishable u/s 10 of the EC Act, the Apex Court in Delhi Municipality Case and Sham Sunder case held that the directors are

not victoriously liable under criminal law and Section 10 of the EC Act does not make all the partners liable for the offences whether they do the

business or not. It is therefore clear that there is a statutory requirement u/s 10 of the EC Act that there should be a prima facie or ex facie

allegation in the FIR to the effect that each partner, who is charged have either committed the offence with consent or connivance of, or is

attributable to any neglect on the part of any director, manage, secretary or other officer of the company, otherwise, he cannot be charged.

14. On the other hand, as rightly relied upon by the learned Government Advocate, the Apex Court in Delhi Development Authority Vs. Skipper

Construction Company (P) Ltd. and another, , held that the concept of Corporate entity was evolved to encourage and promote trade and

commerce but not to commit illegalities or to defraud people.

15. The Apex Court, in evolving the principles which constitute the offence of criminal conspiracy, held in State v. Nalini case, 1999 SCC (Cri.)

691, that conspiracy could be hatched either in private or in secrecy; it is rarely possible to establish a conspiracy by direct evidence; and therefore

both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

16. In the instant case, the petitioners are charged along with the firm and the Managing Director, viz., A1 and A2, who is closely related to the

petitioners herein, as referred to above, for the offence punishable u/s 420 read with 120B, IPC and also u/s 4, 5 and 6 of the Chits Act. The

charge framed against the petitioners, in the instant case, reads as follows:

That between 1992 to 5.9.96 at Chennai, that the accused No. 2 to 5 along with one Abrham (deceased) agreed to do illegal acts by illegal

means, to wit, to deceive the public by inviting deposits from them without any inviting deposits from them without any intention of repaying them

for which purpose made advertisements through various medias such as news papers, magazines, T.V. etc. offering huge rate of interest and gift

schemes to lure the customers. Thus A2 to A5 appear to have committed an offence u/s 120-B, IPC.

In pursuance of the abovesaid conspiracy A2 to A5 have collected huge amount of Rs.55,96,461 from 394 witness listed in the annexure

promulgating various schemes under the caption 1. Omega Fixed Deposit Schemes, 2. Omega Cumulative Deposit Schemes, 3. Omega

Pensioners Fixed Deposit Schemes, 4. Omega Vijayalakshmi Marriage Scheme, 5. Omega Thiraviam Varum Cumulative Recurring Deposit

Scheme, 6. Omega Housing Finance India Ltd., 7. Omega Finance and Investments, 8. Omega Commercial Credit and Investments, 9. Omega

Agro Development Corporation, 10. Omega Leathers & Crafts, 11. Omega Tours and Travels and 12. Omega Foods and Packers though the

various branches at No.18, South Boag Road, T. Nagar at Chennai and Coimbatore in various capacities such as Managing Directors, Partner,

Proprietor and Authorised Signatory and thereby the accused 1 to 5 appear to have made themselves liable for an offence u/s 120B read with

420 IPC and Section 4, 5 and 6 of Prize Chit and Money Circulation Scheme (Banning) Act.

17. Admittedly, the petitioners are partners of the firm-A1; the petitioners 1 and 2 are the wife of A2, who is the managing partner of the firm and

third partner is the sister of the managing partner, A2. Therefore, applying the ratio laid down by the Apex Court in State v. Nalini, 1999 SCC

(Crl.) 691, I do not have any hesitation to hold that the offence of criminal conspiracy punishable u/s 120B could be constituted by inferring from

the circumstances and the conduct of the accused, in the light of the role in A1 and relationship with A2.

18. Again, as pointed out by Mr. N.R. Elango, the learned Government Advocate, Sham Sunder and Others Vs. State of Haryana, is also not

applicable to the facts of the instance case as the said case is u/s 10 of the EC Act, where the prosecution is bound to get themselves satisfied as to

the requisite condition mentioned in sub-section (1) that the partner was responsible for carrying on the business and was during the relevant time,

in charge of the business. In the absence of any such proof, no partner could be convicted. In the instant case, A1 and A2 have admittedly

collected the deposits from the public to the tune of Rs.53,49,466.25 and thereafter, closed the business and absconded, which necessitated the

complainant to lodge a complaint, in pursuance of which, investigation was carried on and the charge sheet was framed, registered in Crime No.8

of 1998, for the offence punishable under Sections 120B read with 420, IPC and under Sections 4, 5, and 6 of the Chits Act.

19. No doubt, the Chits Act is intended to protect the deposits made by the public in the financial establishment, in the matters relating thereto and

the said act is a special enactment to achieve the above object. Section 2(3) defines the financial establishment as follows:

""Financial Establishment" means an individual, an association of individuals or a firm carrying on the business of receiving deposits under any

scheme or arrangement or in any other manner but does not include a company registered under the Companies Act, 1956 or a corporation or a

co-operative society owned or controlled by any State Government or the Central Government, or a banking company as defined u/s 5(c) of the

Banking Regulation Act, 1949 or a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act,

1934.

20. Section 5 of the Chits Act reads as follows:

Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of

interest, on the deposit, 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 extend to one lakh of rupees and such Financial Establishment is

also liable for fine which extend to one lakh of rupees.

21. Even though Mr. Rajamanickam emphasises that even as per Section 5 of the Chits Act, the prosecution has to make out a prima facie case

that every person charged is responsible for the management of the affairs of the financial establishment and then only they could be charged and

tried for the offence punishable u/s 5 of the Act, I am unable to appreciate the same, as the petitioners are not only charged for the offences

punishable u/s 4,5 and 6 of the Chits Act but also for the offence punishable u/s 120B read with 420, IPC. Therefore, it is very difficult to draw the

lien as both the offences are overlapping and in which case, the object of the enactment namely to protect the deposits made by the public in the

financial establishment, cannot be lightly ignored within a conspiracy was said to have been hatched by the petitioners, to defeat the saline object of

the Chits Act. Under such circumstances, I am unable to agree with petitioners that the charges framed against the petitioners could be quashed

merely because the FIR or statement obtained u/s 161, Cr.P.C., does not disclose any allegation against the petitioners, inasmuch as I am satisfied

that the circumstances of the case and the conduct, particularly in the light of the admitted role of the petitioners A1 company and the relationship

with A2 and their conspiracy conduct could be inferred to constitute an offence under Sections 4, 5 & 6 of the Chits Act read with 120B and 420,

IPC.

22. Finding no merits, the petition is dismissed. However, learned Special Judge is directed to dispose of the case, on merits, without being

prejudiced by the finding in the above petition.