

V. Siva Prasad Vs State of A.P.

Court: Andhra Pradesh High Court

Date of Decision: June 7, 2000

Acts Referred: Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 " Section 3, 4, 5, 6, 6(2)

Criminal Procedure Code, 1973 (CrPC) " Section 173, 4, 4(2), 482, 5

Partnership Act, 1932 " Section 58(1)

Penal Code, 1860 (IPC) " Section 415, 420

Citation: (2000) 2 ALD(Cri) 165 : (2000) 2 ALT(Cri) 419 : (2000) CriLJ 3988

Hon'ble Judges: Vaman Rao, J

Bench: Single Bench

Advocate: P. Shiv Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vaman Rao, J.

This petition u/s 482, Cr. P.C. seeks quashing of proceedings in FIR No. 16 of 2000 registered at Medipally police station

on the basis of a complaint lodged by one K. Murali in which the petitioner is accused of offence u/s 420 Indian Penal Code and Section 5 of A.P.

Protection of Depositors and Establishments Act, 1999.

2. It is contended by the learned counsel for the petitioner that the allegations in the complaint do not make out any ingredients of the offence u/s

420, IPC. In respect of the offence u/s 5 of A.P. Protection of Depositors and Establishments Act, 1999, it is contended that the complaints in

respect of the said Act are required to be filed before the designated authority and thus it is contended that the FIR under these circumstances,

deserves" to be quashed.

3. The relevant facts may be stated briefly as follows :

The complainant is a carpenter by profession. About four years prior to the filing of the complaint, himself and some other villagers each deposited

a sum of Rs. 5,000-00 in all by remitting Rs. 250/- per month for 20 months through one agent by name Rajanna with ""Sudha Finance Company,

Korutla"" of which the petitioner herein is said to be a Director. It is stated that having read in the newspapers that many other Finance companies

are cheating the depositors, the complainant and others went to the said Finance Company and demanded back their deposits. The accused

assured them to pay the money within two months. Subsequently, when they went to the office of the Finance company it was found closed. The

accused were approached through agent Rajanna but they have been dodging the issue and about a month prior to the complaint when they

questioned about the money they replied that they do not have money and they challenged them to do whatever they wanted.

4. The contention of the learned Counsel for the petitioner is that the allegations in the complaint merely go to show that the complainant

apprehended that the accused would cheat him on the basis of Newspapers report that some other Finance companies had cheated their

depositors. The contention is that in the absence of any specific allegations, which could constitute cheating as defined u/s 415, IPC, the

proceedings in the FIR are liable to be quashed. It is further contended that at any rate the petitioner herein is not a partner of Sudha Finance

Company, Korutla and he has nothing to do with the said firm. The petitioner relies on certified copy of registration of the firm u/s 58(1) of the

Indian Partnership Act issued by Registrar of Firms, which is filed with the petition.

5. The learned Counsel for the petitioner Srishiva Kumar points out that the deposit made by the complainant was liable to be refunded with

accumulated interest by 20th December 2000. The allegation is that because there were Newspaper reports that many Finance companies have

cheated the depositors, the complainant approached the said Sudha Finance company for refund of their deposits and that there is no allegation

which can constitute cheating as defined u/s 415, IPC. The complaint does not disclose as to what was the representation, which was later found

to be false or fraudulent, which could constitute practicing of deceit, which induced the complainant to make the deposit with the said Sudha

Finance Company.

6. For constituting an offence of cheating as defined u/s 415, IPC, it may not be necessary that the alleged deception practiced by the accused and

the fraudulent representation, which induced the complainant to part with his money, should have been discovered soon after the transaction.

What was taken by the complainant as an honest business representation may be discovered subsequently to have been, in fact, a deception and a

fraudulent representation.

7. In this case, the allegations go to show that the subsequent conduct of those in charge of the said finance company does not appear inconsistent

with the allegation of cheating.

8. It is firstly stated that on the request of the complainant, they promised to repay the deposits made by the complainant after two months and

when they approached after two months, they found that the said company was closed. It is further alleged that When the complainant approached

the agent through whom he deposited the money, he replied that they had no money and challenged the complainant to do whatever he could.

9. Though it would appear that all the ingredients of the offence u/s 420 of IPC are not present in the allegations made in the complaint, in a petition

u/s 482, of Cr. P.C. this Court would not examine the allegations meticulously and microscopically to ascertain whether each and every element of

the alleged offence is present or not. When the allegations go to indicate that some illegal acts have been committed disclosing some offence, it

would not be desirable to abort the investigation by quashing the investigation at the FIR Stage. It is for the concerned police to investigate and if

the investigation does not result in discovery of facts satisfying the ingredients of the offence, obviously the investigation has to be closed. But if the

investigation discloses that even from the very beginning, the petitioner had intended to cheat and was indulging in the fraudulent transaction, it is for

the concerned investigating agency to deal with such discoveries.

10. The next contention raised on behalf of the petitioner is that in view of the provisions of the Andhra Pradesh Protection of Depositors of

Financial Establishments Act, 1999 (for short "the Act"), the police has no jurisdiction to investigate into the alleged offences arising out of default

of such companies in repayment of the deposits made by the customers.

11. The contention of the learned counsel for the petitioner is that for dealing with such matters, the act provides for establishment of special Courts

u/s 6 of the Act and such Special Courts will have an exclusive jurisdiction to try the offences arising under the Act. The learned counsel for the

petitioner particularly relies on Sub-section (2) of Section 6 of the Act in support of his contention that except the Special Court, no other Court

has jurisdiction and as such any investigation done by the police would be of no avail as the regular Courts where the report of the investigation u/s

173 of Cr. P.C. normally filed would have no jurisdiction to entertain the offences under the Act.

12. In the first flush, the argument appears plausible but a closer examination would show that this contention has no legs to stand.

13. It is pertinent to mention here that the act has been enacted to protect the depositors with the financial establishments as defined under the Act.

Section 3 of the Act authorizes the Government on satisfying the conditions laid down in the section to attach the properties of such companies.

Such attachment can be effected where the Government have reason to believe that the establishments have committed default in return of deposits

in cash or kind after maturity or in any manner agreed upon or where the Government have reason to believe that any financial institution is acting in

a manner prejudicial to the interest of the depositors with an intention to defraud the depositors and if the Government are satisfied that such

financial institutions are not likely to return the deposits in cash or kind after maturity or in any manner agreed upon in order to protect the interest

of the depositors of such financial establishment, the Government may pass an ad interim order attaching the money or the property alleged to have

been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the

financial establishment or if it transpired that such money or other property is not available for attachment or is not sufficient for repayment of the

deposits, and under these circumstances the properties of a promoter or manager or member of the said financial establishment can also be

attached.

14. Section 4 of the Act contemplates appointment of a competent authority to exercise control over the properties attached by the Government

u/s 3 of the Act.

15. As far as offences are concerned, the act creates a special offence u/s 5 of the Act which is extracted below :

5. Penalty for default :- Where any financial establishment defaults in the return of the deposit either in cash or in kind or defaults in the payment of

interest on the deposit as agreed upon, every person responsible for the management of the affairs of the financial establishment including the

promoter, Manager of Member 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 rupees one lakh and such financial establishment shall also be liable for fine which may extend to rupees five lakhs.

16. Thus, a reading of Section 5 of the Act indicates that mere default in repayment of the principal or interest itself has been constituted as an

offence punishable under the said provision with imprisonment or fine.

17. Section 6 of the Act contemplates establishment of Special Court for trying offences as defined u/s 5 of the Act. Section 6 of the Act is

extracted below :

6. Special Court:- (1) For the purposes of this Act, the Government shall, with the concurrence of the Chief Justice of the High Court, by

notification, constitute a District and Sessions Court as a Special Court.

(2) No Court including a Court constituted under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, other than

the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

(4) The Special Court shall, on an application by the competent authority, pass such order or issue such direction as may be necessary for the

equitable distribution among the depositors of the money realized from out of the property attached.

18. The learned counsel for the petitioner as stated above refers to Sub-section (2) of Section 6 of the Act and contends that no Court other than

the special Court established u/s 6 of the Act shall have jurisdiction in respect of any matter to which the provisions of the Act shall apply. Under

Sections 6 and 7 of the Act, the Special Court is required to give a notice to the financial establishment concerned as to why the ad interim

attachment effected u/s 3 of the Act shall not be made absolute. The provision contemplates hearing of objections if any with regard to the

property attached and hearing the financial establishment, or its officials etc. as to why the attachment should not be made absolute. If any

objection is made as to the ad interim order of attachment, Sub-section (5) of Section 7 contemplates that the Special Court shall investigate the

same and record evidence for the said purpose. Under Sub-section (6) of Section 7 of the Act, after investigation, the Special Court can make ad

interim order absolute or vary it releasing a portion of the said property from attachment or pass an order cancelling the ad interim attachment.

19. Thus, the Special Court contemplated u/s 6 of the Act has several functions including conducting trial in respect of an offence created u/s 5 of

the Act and also to deal with the attachment of the properties of the financial establishment which have been attached under the interim orders by

the Government u/s 3 of the Act.

20. It would thus be obvious that under Sub-section (2) of Section 6 of the Act exclusive jurisdiction is vested with the special Court only in

respect of the matters to which the provisions of the Act apply. Trial of offence u/s 420 of IPC are thus excluded from the exclusive jurisdiction of

the Special Court.

21. Normally, a regular criminal Court shall be deemed competent to deal with all offences including the offences under the Indian Penal Code.

Exclusion of jurisdiction of the Criminal Courts cannot be presumed lightly.

22. In this regard, it is necessary to refer to Section 4 of Cr. P.C. which mandates that all offences under the Indian Penal Code shall be

investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Criminal Procedure Code. Sub-section (2) of

Section 4 of Cr. P.C. contemplates that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with

according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring

into, trying or otherwise dealing with such offences.

23. Section 5 of Cr. P.C. provides that nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any

special or local law for the time being in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by any

other law for the time being in force.

24. A plain reading of these provisions of the Cr. P.C. would make it abundantly clear that normal assumption in respect of offences under Indian

Penal Code is that they shall be investigated, enquired into, tried or otherwise dealt with according to the provisions in the Criminal Procedure

Code. In regard to the other offences, a similar presumption shall be raised unless there is any special enactment relating to the manner or the place

of investigating, enquiring into or trying or otherwise dealing with such offences.

25. Section 5 of the Cr. P.C. saves the operation of any other law for the time being in force creating any special jurisdiction or power conferred

or any special form of procedure prescribed.

26. In this case, "enactment" mentioned in Sub-section (2) of Section 4 of Cr. P.C, and "any special or local law" or "any special jurisdiction or

power conferred" contemplated u/s 5 of Cr. P.C, should be referable to Section 6 of the Act if the contention of the learned counsel for the

petitioner is to be accepted.

27. A close examination of the provisions of Section 6 of the Act would lead to a conclusion that as far as investigation, enquiry or trial of the

offences under the Indian Penal Code is concerned, the normal jurisdiction as contemplated u/s 4 of Cr. P.C. is not affected at all. There is nothing

in Section 6 of the Act to indicate that any offence under the Indian Penal Code including the offence u/s 420 of IPC is encompassed by it. With

reference to Section 5 of Cr. P.C it is obvious that the special jurisdiction conferred on the Special Court u/s 6 of the Act is confined to matters to

which the provisions of the said Act apply. It is obvious that an offence u/s 420 of IPC is not a matter to which the provisions of the said Special

Act apply. As stated above, the matters which will fall within the purview of special jurisdiction as conferred u/s 6 of the Act shall at best be

relating to trial of offences specially created u/s 5 of the Act and matters relating to attachment of the properties as contemplated u/s 3 and other

provisions of the Act.

28. It may be mentioned that mere default in payment of the deposited amount has been legislatively converted into an offence punishable under the

Act. This offence does not supplant or displace the offence u/s 420, IPC Exclusive jurisdiction of the Special Court contemplated u/s 6 of the Act

could only be in relation to the said offence created u/s 5 of the Act. By no stretch of imagination, could it be inferred that the Special Court will

have an exclusive jurisdiction in respect of an offence of cheating punishable u/s 420 of IPC even if it is committed by the financial institutions as

defined in the Act.

29. Further exclusive jurisdiction of special Court has relevance for the trial of offences and not for investigation. On this ground proceedings at the

stage of investigation cannot be quashed even in respect of allegations of commission of special offence. At any rate, in this case the allegations

indicate special offence as well as offences under Indian Penal Code.

30. Thus, I have no hesitation in holding that as far as the offences u/s 420 of IPC are concerned, the Special Court u/s 6 of the A.P. Protection of

Depositors Act, 1999 cannot be said to have an exclusive jurisdiction.

31. In the result, there are no grounds for quashing the proceedings of the first information report in Crime No. 16 of 2000 of Medpalli Police

Station, Karimnagar District and accordingly the petition is dismissed.