

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.967 OF 2004

M. Diwakar

... Appellant

versus

State of Tamil Nadu

... Respondent

ORDER

1. The appellant was tried along with his wife before the Additional Metropolitan Magistrate Court, Egmore, Chennai for offences under Sections 420 and Section 120B of the IPC on the allegation that he and his wife hatched a criminal conspiracy and invited deposits from the public for investment in their scheme "Gold Jewels Scheme". They lured people into depositing money in the firm 'Sreenivasalu Chetty'. They issued various advertisements and collected amounts from the small investors to the extent of Rs.1,05,50,170/- (Rupees one crore, five lacs, fifty thousand one hundred and setenty only) and diverted the funds to two other firms by the name 'Mudra Silver Drafts' and 'NSC Investors' floated by the appellant and his wife. In the course of the same transaction, the appellant and his wife assured the depositors that they would pay 21 per cent interest and an incentive of three per cent and also reward the investors with gold jewels under the scheme. Apparently, the appellant and his wife did not keep their promises. Small investors lodged complaints and offences under Sections 420 and 120B of the IPC were registered against the appellant and his wife. Small depositors stepped in the witness box. They are PW1 to PW26. The details of investigation were given by PW27, Inspector of Police. After perusing the evidence, learned Magistrate found that there was no evidence against the appellant's wife who was arraigned as accused no.2. She was accordingly acquitted. So far as the appellant is concerned, he was convicted under Section 420 of the IPC and sentenced to suffer three years' Rigorous Imprisonment and a fine of Rs.5,000/- (Rupees five thousand only), in default to undergo six months RI.

2. The appellant carried an appeal to the court of IV Additional Additional Sessions Judge, City Civil Court, Chennai. His appeal was dismissed. By the impugned order, the High Court also dismissed his revision. Hence, this appeal.

3. We have heard Mr. Ranjan Mukherjee, learned counsel for the appellant, at some length.

4. Learned counsel submitted that the appellant bona fide invited people to invest money in his scheme. The intention was not to cheat them but was to give them double the amount which they had invested. We are not impressed with his submission. On this question, three courts have concurrently held against the appellant. We have no reason to take a different view.

5. Learned counsel then submitted that the appellant is declared insolvent in the year 1996. He submitted that as on 4.12.2003 an amount of Rs.18,05,045/0 (Rupees eighteen lacs five thousand and forty five only) is lying with the official assignee at Chennai. He drew our attention to Section 31 of the Provincial Insolvency Act, 1920 which deals with protection order. He stated that the appellant is covered by the said provision. We are not impressed by this submission also. So far as the amount lying with the official assignee is concerned, that will be duly distributed as per law and procedure to the claimants. So far as Section 31 is concerned, it has no application to the present case inasmuch as here the appellant is charged for a criminal offence, i.e., offence punishable

under Section 420 of the Indian Penal Code and has been sentenced for the same. Learned counsel also stated that the appellant has paid the investors an amount of Rs.23,00,000/- (Rupees twenty three lacs only). Assuming the appellant has paid some money to the investors, that has no relevance to the present case.

6. Learned counsel further submitted that the appellant has undergone roughly eight months without remission and considering the fact that he has been declared insolvent, a kindly view may be taken. We reject this submission also. Considering the nature of the offence committed by the appellant, we are not inclined to show any leniency.

7. The appeal is dismissed.

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(Ranjana Prakash Desai)

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(Madan B. Lokur)

New Delhi;
March 13, 2014
ITEM NO.112

COURT NO.11

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 967 OF 2004

M. DIWAKAR

Appellant (s)

VERSUS

STATE OF TAMIL NADU

Respondent(s)

(With appln(s) for exemption from surrendering and office report)

Date: 13/03/2014 This Appeal was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. Ranjan Mukherjee, Adv.
Mr. Faisal M. Aboobalker, Adv.
Mr. Shankar Divate, Adv.

For Respondent(s) Mr. M. Yogesh Kanna, Adv.
Ms. Vanita Chandrakant Giri, Adv.
Mr. A. Santa Kumaran, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

[Gulshan Kumar Arora]
Court Master

[Indu Pokhriyal]
Court Master

(Signed order is placed on the file)