

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1486 OF 2013
(Arising out of SLP(CRL.) No.1511 of 2006)

STATE OF A.P. APPELLANT
VERSUS
SINGIREDDY SRINIVASA REDDY RESPONDENT

WITH

CRL. A. NO.1487 OF 2013 (@ SLP(Crl) NO.1512 of 2006)
CRL. A. NO.1488 OF 2013 (@ SLP(Crl) NO.1515 of 2006)
CRL. A. NO.1490 OF 2013 (@ SLP(Crl) NO.1513 of 2006)
CRL. A. NO.1491 OF 2013 (@ SLP(Crl) NO.1517 of 2006)
CRL. A. NO.1492 OF 2013 (@ SLP(Crl) NO.2073 of 2006)
CRL. A. NO.1489 OF 2013 (@ SLP(Crl) NO.1516 of 2006)

O R D E R

CRL. A. NO.1486 OF 2013, CRL. A. NO.1487 OF 2013, CRL. A. NO.1488 OF 2013, CRL. A. NO.1490 OF 2013, CRL. A. NO.1491 OF 2013, AND CRL. A. NO.1492 OF 2013

Leave granted.

By the impugned order, the High Court has quashed the offence registered against the respondents under section 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999 (hereinafter referred to as the 'Act').

The High Court has taken the aforesaid view on the premise that co-operative banks come within the ambit of banking company defined under section 5(1)(c) of the Banking Regulation Act, 1949 and therefore, such banks are not financial establishments within the meaning of section 2(c) of the Act. A Full Bench of the High Court has taken this view and in fact, same has been followed in the orders impugned. The correctness of the view taken by the High Court has been considered by a three-judge Bench of this Court in the case of Greater Bombay Co-op. Bank Ltd. vs. M/s United Yarn Tex. Pvt. Ltd. & Ors. - JT 2007 (5) SC 201. In this case, it has been held as follows :

"92. 'Co-operative banks' established under the Maharashtra Co-operative Societies Act, 1960 (MCS Act, 1960]; the Andhra Pradesh Co-operative Societies Act, 1964 [APCS Act, 1964]; and the Multi-State Co-operative Societies Act, 2002 [MSCS Act, 2002] transacting the business of banking, do not fall within the meaning of "banking company" as defined in section 5(c) of the Banking Regulation Act, 1949 [BR Act]. Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [RDB Act] by invoking the Doctrine of incorporation are not applicable to the recovery of dues by the co-operatives from their members."

The Constitutional validity of the Act has been upheld by this Court in Soma Suresh Kumar vs. Government of Andhra Pradesh & Ors. -

2013 (11) SCALE 262, wherein this Court observed as follows :

"We notice in New Horizon Sugar Mills Ltd's case (supra), this Court held that the objects of the Tamil Nadu Act, Maharashtra Act and the Pondicherry Act are the same and/or of similar nature. In our view, the object and purpose as well as the provisions of the Andhra Act are pari materia with that of Tamil Nadu, Maharashtra and Pondicherry Acts, the constitutional validity of those legislation has already been upheld. We also fully concur with the views expressed by this Court in those Judgments and uphold the constitutional validity of the Andhra Act."

In an unreported decision (Criminal Appeal No.631 of 2007 - State of Andhra Pradesh vs. Boorugu Muralidhar & Ors. Etc., disposed of on 18.04.2007), this Court followed the decision in the Greater Bombay Co-op. Bank Ltd.'s case (supra) and set aside an identical order in the following words :

"The High Court has taken the aforesaid view on the premise that Co-operative Banks come within the ambit of 'Banking Company' defined under section 5(1)(c) of Banking Regulation Act 1949 and that, therefore, such Banks are not 'Financial Establishments' within the meaning of section 2(c) of the Act. The view taken by the High Court has been negated by the recent decision by a three-Judge Bench of this Court in Civil Appeal No.432/2004 & Ors. decided on 04.04.2007, Greater Bombay Co-op. Bank Ltd. vs. M/s United Yarn Tex. Pvt. Ltd. & Ors. - JT 2005 (5) SC 201."

In view of the decisions aforesaid, the order impugned is erroneous.

However, to put the record straight, learned counsel for the respondents-accused have referred to this Court's order dated 08.11.2010 in SLP(Crl.) No...../2010 CRL.M.P. No.21744, in which a co-ordinate Bench of this Court had dismissed the special leave petition arising out of an identical order passed by the High Court, which reads as follows :

"Delay condoned.

Having considered the submissions made in respect of the Special Leave Petition, we see no reason to interfere with the order of the High Court impugned therein. Since the proceedings taken under Section 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999, were quashed by the High Court, it gave certain directions to the trial court to return the chargesheet to the Investigating Officer to enable him to file a fresh chargesheet under the provisions of the Indian Penal Code.

It may also be indicated that the order of the High Court was passed on a Full Bench decision of the Court in Criminal Petition Nos.3476 and 3489 of 2005 dated 14th September, 2005. Accordingly, the Special Leave Petition is dismissed and the petitioner may continue to proceed in accordance with the directions given by the High Court."

It seems that the attention of the court was not drawn to three-judge Bench decision of this Court rendered earlier in the case of Greater Bombay Co-op. Bank Ltd. (supra), which in no uncertain terms has overruled the ratio of the decision of the Full Bench of the High Court, relied on in the aforesaid order. Therefore, the order relied on cannot be treated as a binding precedent.

As the matter stands concluded by the judgment of this Court in the cases of Greater Bombay Co-op. Bank Ltd. (supra), Soma Suresh Kumar (supra) and Boorugu Muralidhar & Ors. (supra) referred to above, the impugned orders cannot be allowed to stand.

SLP(Crl) NO.1515 of 2006

(With appln(s) for c/delay in filing SLP,exemption from filing c/c of the impugned Judgment,stay and office report)

(For final disposal)

SLP(Crl) NO.1516 of 2006

(With appln(s) for c/delay in filing SLP,exemption from filing c/c of the impugned Judgment,stay and office report)

(For final disposal)

SLP(Crl) NO.1513 of 2006

(With appln(s) for c/delay in filing SLP,exemption from filing c/c of the impugned Judgment,stay and office report)

(For final disposal)

SLP(Crl) NO.1517 of 2006

(With appln(s) for c/delay in filing SLP,exemption from filing c/c of the impugned Judgment,stay and office report)

(For final disposal)

SLP(Crl) NO.2073 of 2006

(With appln(s) for c/delay in filing SLP,exemption from filing c/c of the impugned Judgment,ad-interim ex-parte stay and office report)

(For final disposal)

Date: 20/09/2013 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. A.T.M. Rangaramanujam, Sr. Adv.
Mr. G. N. Reddy, Adv.
Mr. Debojit Borkakati, Adv.
Mr. Bala Shivudu M., Adv.

For Respondent(s) Mr. Amrendra Sharan, Sr. Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Praseena E. Joseph, Adv.
For Mr. P. Narasimhan, Adv.

Mr. D. Mahesh Babu, Adv.
Ms. Suchitra Hrangkhawl, Adv.

Mr. Raj Kumar Mehta, Adv.

Mr. P.S. Narasimha, Sr. Adv.
Mr. S. Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Ms. Praseena E. Joseph, Adv.
Mr. Shivendra Singh, Adv.
Mr. Rahul Pandey, Adv.
For M/s Lawyer's Knit & Co.

Mr. G. Ramakrishna Prasad, Adv.
Mr. B. Suyodhan, Adv.
Mr. Mohd. Wasay Khan, Adv.
Ms. Filza Moonis, Adv.

Mr. Venkateswara Rao Anumolu, Adv.
Mr. Prabhakar Parnam, Adv.
Mr. J.N. Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

These appeals are allowed in terms of the signed order.

(Sanjay Kumar)

Court Master|

(Indu Satija)

| Court Master |

(Signed order is placed on the file)