M.A.A.Annamalai vs State Of Karnataka & Anr on 12 August, 2010

Equivalent citations: 2010 AIR SCW 6846, 2010 (8) SCC 524, 2011 CRI. L. J. 692, 2011 (1) AIR KANT HCR 236, 2010 (3) CALCRILR 15, 2010 (3) SCC(CRI) 950, 2010 (47) OCR 979, 2011 (72) ALLCRIC 474, 2010 (8) SCALE 176, 2010 ALL MR(CRI) 2939, 2010 CALCRILR 3 15, (2010) 4 JCR 34 (SC), (2010) 98 CORLA 414, (2010) 3 ALLCRIR 3509, (2010) 4 CHANDCRIC 27, (2010) 4 CRIMES 190, (2010) 3 CURCRIR 468, (2010) 4 RECCRIR 80, (2010) 8 SCALE 176, (2010) 4 ALLCRILR 226, 2011 (1) ALD(CRL) 494

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Bench: A.K. Patnaik, Dalveer Bhandari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1504 OF 2010
(Arising out of SLP (Crl) No.5768 of 2008)

M.A.A. Annamalai .. Appellant

Versus

State of Karnataka & Another .. Respondents

JUDGMENT

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 26.05.2008 passed by the High Court of Karnataka at Bangalore in Criminal Petition No.2625 of 2004.

3. Brief facts of the case are as under:-

> The appellant, who was one of the Directors of R.P.S. Benefit Fund Ltd. submitted his resignation letter on 8.12.1997 which became effective from the date of filing of Form 32 (27.12.1997) with the Registrar of Companies. The said Form has been filed with this petition.

4. Respondent no.2 filed a complaint with the Indira Nagar Police Station, Bangalore, alleging:

> - that RPS Benefit Fund had invited deposits from the public vide circular dated 06.12.1998 and that monies had been invested by the Petitioner and his wife in the Pensioner's Benefit Fund, pursuant to the approval of the scheme by the Reserve Bank of India;
>
> - that the Company had issued letters on 18.05.1999 and 14.06.1999 to the investors not to present their interest warrants and that payments of interests would be made by August 1999;

- that the company had since closed its business and the amount due to the Respondent No.2 was about Rs.2,91,778/-;

5. The Respondent No.2 lodged a First Information Report on 15.10.1999 with the Indira Nagar Police Station alleging the offence under section 420 Indian Penal Code read with sections 3, 4, 5 and 6 of the Money Circulation and Banning Act, 1978." In the FIR, it was stated that the alleged offences, if any, were committed during the period between 24.05.1998 and 17.09.1999.

6. According to the appellant, he ceased to be a Director of the company from 27.12.1997, therefore, he was not responsible in any manner for what had happened in the company after he had resigned as a Director of the company.

7. The First Information Report was lodged by respondent no.2 and consequently the then Xth Additional Chief Metropolitan Magistrate, Bangalore issued a non bailable warrants against the appellant.

8. On Company Petition filed at the instance of the creditors, the Company Court on 23.7.2002 directed the winding up of the company. In the winding up petition, nothing had been mentioned about the appellant because he was not the Director of the company at the relevant point of time.

9. The Karnataka High Court on 10.6.2004 directed quashing of the entire proceedings in Criminal Petition No.4007 of 2002 regarding the erstwhile Directors of the company. The proceedings before the Xth Additional Chief Metropolitan Magistrate were based on the complaint filed by respondent no.2 stating that he and his wife had invested in the Short Term Deposit Scheme with the company.

10. The High Court held that some of the Directors of the company had retired in April 1999 and that the non-payment of matured funds and non payment of interest amount had taken place after April 1999. According to the appellant, he is in no manner responsible for company's non payment

of either the mature funds and interest amount. The appellant submitted that the petition had been filed for some collateral purposes for unnecessary exerting the pressure on the former Directors.

11. The learned Judge also held that material ingredients of the offence of cheating had not been made out. The appellant filed a petition before the High Court of Karnataka under section 482 of the Code of Criminal Procedure seeking to quash the proceedings initiated on the basis of the complaint registered as CC 22656 of 2001 arising out of the Crime No.425/1999 pending before the Xth Additional Chief Metropolitan Magistrate, Bangalore.

12. The appellant submitted that he cannot be held liable or responsible for any of the alleged illegalities committed by the company after he had resigned from the company. The appellant's main grievance is that in the impugned judgment, the learned Single Judge has not dealt with this principal argument advanced by the appellant. In the impugned judgment the court observed:-

> "It is needless to say that there are some documents produced by the petitioner to show that at the relevant point of time he was not the Director of the Company. It is also his case that he also being an investor, the ratio followed by this court in the case of similarly situate persons, applies to his case also. However, it is for the trial court to ascertain as to whether there is investment by the petitioner or not, when he was appointed as a Director, when he resigned and whether the alleged incident has taken place during his directorship and further, to ascertain the preliminary aspect as to whether there is a prima facie case against him and whether he has participated in the proceeding or not as in- charge and managing affairs keeping in view the various decisions and pass orders in accordance with law."

13. The court further observed that the petition was disposed of with a direction to the appellant to approach the trial court seeking for order of discharge.

14. According to the appellant, even according to the averments of the complaint in the First Information Report there were no allegations whatsoever against the appellant, in that event, the High Court ought to have quashed the proceedings against the appellant instead of compelling him to approach the Trial Court for obtaining the order of discharge. The casual approach of the High Court has led to grave miscarriage of justice.

15. According to the appellant, respondent no.2 had invested in the Pensioner's Benefit Fund after approval of the scheme by the Reserve Bank of India and therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination. The complaint and the First Information Report, as aforementioned, do not make out any case against the appellant.

16. In the facts and circumstances of this case, the High Court was not justified in refusing to quash the complaint against the appellant and compelling him to go to the trial court for seeking an order of discharge.

17. We have heard the learned counsel for the parties. The learned counsel appearing for the State has failed to point out any specific allegation or averment against the appellant. Admittedly, the appellant had resigned from the Board of Directors of the Company with effect from 27.12.1997 and therefore, cannot be held responsible for any activities of the company after he ceased to be a Director of the company. Even, according to the allegation of respondent no.2, no criminal case can be made out against the appellant.

18. It may be pertinent to mention that a letter has been placed on record which was sent by respondent no.2, R. Narayanamurthy to the Inspector of Police, Indranagar Police Station, Indranagar, Bangalore which reads as under:-

> "From:
>
> R. Narayanamurthy, S/o Late N.A. Ramaswamy, 105, Second Main Road, 4th Cross, Sadanandnagar, NGEF Layout, Bangalore - 560038 To The Inspector of Police, Indranagar Police Station, Indranagar, Bangalore-560033 Dear Sir, Sub: Complaint against RPS Benefit Fund Ltd. and Mr. M.A.A. Annamalai, Director of the company. I wish to inform you that I am withdrawing all my charges against the abovesaid company and its director M.A.A. Annamalai, s/o Annamalai Chettiar residing at No.1, Velayudam Street, Nungambakkam, Chennai -6000034. I further wish to inform you that I am withdrawing all my criminal cases against Mr. M.A.A. Annamalai and other directors because of my advanced age and ill health and also as I have received 55% of the deposited amount from the Official Liquidator, High Court of Madras at Chennai and I am also confident to receive further amounts in due course. I also understand that Mr. M.A.A. Annamalai resigned from the Board of RPS benefit Fund Ltd. on 8/12/1997 whereas I have deposited my money with the company only in December 1998 and in the year 1999. His name has been inadvertently included as an accused by the Investigating Officer.
>
> Hence I am withdrawing all my criminal charges against Mr. M.A.A. Annamalai and the company. Thanking you, Yours faithfully, Sd/-
>
> (R. Narayanamurthy) Date: 16/09/09"

19. This letter indicates that respondent no.2 is not interested in prosecuting the appellant. According to the appellant, the proceedings initiated against the appellant in this case are liable to be quashed.

20. It may be pertinent to mention that respondent no. 2 also filed an affidavit on 16.9.2009 before this Court. In this affidavit, reference has also been made to the affidavit filed before the High Court on 24.6.2009 in which he prayed that all cases against the Company and the Directors be withdrawn as he had already received 55% of the deposit amount from the Official Liquidator, High Court of Madras at Chennai. In the said affidavit filed before this Court, it was also mentioned that the appellant had resigned as Director from RPS Benefit Fund Ltd. on 8.12.1997 but his name had been

included as one of the accused by the Investigating Officer. In this connection, he had also mentioned that the deponent was to withdraw the charges of cheating against all the Directors of the RPS Benefit Fund Ltd., including the appellant pending before the 10th Additional Chief Metropolitan Magistrate, Bangalore.

21. The learned counsel for the appellant submitted that, apart from the affidavit of respondent no. 2, no case under section 420 IPC is made out against the appellant. The primary requirement to make out an offence of cheating under section 415 punishable under section 420 IPC is dishonest/fraudulent intention at the time of inducement is made. In order to appreciate the controversy in proper perspective, we deem it appropriate to reproduce section 415 IPC. The same reads as under:

> "415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

22. Two main ingredients of section 420 IPC are dishonest and fraudulent intention. The Indian Penal Code has defined the word "dishonestly" in section 24 IPC. Section 24 IPC reads as under:

> "24. Dishonestly - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly"."

23. The word "fraudulently" has also been defined in section 25 IPC. Section 25 IPC reads as under:

> "25. Fraudulently - A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

24. In the instant case, according to the appellant there has been no dishonest intention nor have any allegations as to the extent of such a dishonest intention been made in the complaint and FIR. In fact, no material whatsoever has been produced by the respondent no.2 which would indicate any such dishonest/fraudulent intention at any stage leave alone at the stage of the alleged inducement of inviting depositors to deposit money with the company. Furthermore, the complaint against the Chairman and the Managing Director itself has been quashed by an order of the High Court for the very reason that such dishonest/fraudulent intention was not made out in this case. The judgment of the High Court acquired finality before no appeal was preferred before this Court.

25. It is submitted that the FIR merely alleged a violation under the Money Circulation and Banning Act without giving any basis or material for the same, cannot be sustained. In the instant case, a company was operating under license from the Reserve Bank of India and was so carrying on a legitimate business under a license by the statutory authority. The mere fact that the company got

into financial distress and went into liquidation would not in any manner make the activity carried out by them unlawful so as to invoke sections 3 to 6 of the Money Circulation and Banning Act. In fact, to fall within the mischief of the Act, it must be shown that the activity ought to be an unlawful one to make quick and easy money and a lawful activity duly approved by the Reserve Bank of India cannot fall under the mischief of the said Act.

26. According to the appellant, the company started its activities only after getting license from the Reserve Bank of India and the depositors were legally invited to invest in the company thereafter and respondent no.2 was one of the depositors. Admittedly, in the liquidation proceedings, more than 55% of outstanding company's liabilities had been cleared despite the company having been wound up.

27. The appellant submitted that a complaint under section 420 IPC stands on a different footing than a complaint under a special statute. Unlike special statutes, like the Negotiable Instruments Act which casts a vicarious liability on officers in charge of and responsible for the company in an offence under the Indian Penal Code, there is no role for vicarious liability. The appellant has also alleged that even assuming that the company can be said to have committed an offence, this would not be enough to sustain a complaint against any officer of the company for an offence under the Indian Penal Code unless an allegation or material of the said officer having been involved in the commission of the offence is made out. Any special provision like section 141 of the Negotiable Instruments Act, a deemed provision is included where if the offence is committed by a company, the officers responsible for the conduct of the business of the company are deemed to be liable and a presumption of their liability arise unless duly discharged by them. There is no such presumption under the Indian Penal Code and while so necessary allegation/ material must be available not merely against the company but also against the accused persons as having participated in such offence. In the instant case, there is not even a whisper anywhere either in the complaint or in any material collected to show a direct participation of the appellant who was merely included on the ground that, once upon a time, he was one of the Directors of the company.

28. The appellant also submitted that even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in absence of any allegations and material to show that the appellant was in charge of or responsible for the conduct of the company's business which had given rise to the offence. In the instant case, the appellant ceased to be the Director of the company w.e.f. 27.12.1997 following his resignation on 8.12.1997, which fact was also recorded in the Statutory Form 32 filed before the Registrar of Companies. The complaint itself expressly stated that the offence had taken place only thereafter and in fact the FIR expressly stated that the occurrence of offence was between 24.5.1998 and 17.9.1999. At that stage, the appellant had admittedly ceased to be a Director of the company and was not even connected with the company in any manner at the time when the alleged offence was committed and cannot be prosecuted in respect of such acts of the company.

29. The appellant, in order to strengthen his stand, has placed reliance on a numbers of judgments of this Court. Reliance has been placed on the case of Hira Lal Hari Lal Bhagwati v. CBI, New Delhi (2003) 5 SCC 257. In this case, the Court has observed that for establishing the offence of cheating,

the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such a culpable intention right at the beginning cannot be presumed.

30. Reliance has also been placed on another case between Uma Shankar Gopalika v. State of Bihar & Another (2005) 10 SCC 336, in which this Court observed that it is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.

31. The learned counsel for the appellant also relied on the case of S.V.L. Murthy etc. v. State represented by CBI, Hyderabad (2009) 6 SCC 77, in which this Court observed as under:

> "41. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:
>
> (i) deception of a person either by making a false or misleading representation or by other action or omission;
>
> (ii) fraudulently or dishonestly inducing any person to deliver any property; or
>
> (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out."

32. In Vir Prakash Sharma v. Anil Kumar Agarwal (2007) 7 SCC 373, this Court observed as under:

> "13. The ingredients of Section 420 of the Penal Code are as follows:
>
> (i) Deception of any persons;
>
> (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
>
> (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception."

33. This Court in Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. (1998) 5 SCC 749 observed as under:

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

34. The learned counsel appearing for the State of Karnataka supported the impugned judgment of the High Court and submitted that no interference is called for by this court. He placed reliance on the case of State of Haryana & Others v. Bhajan Lal & Others 1992 Supp (1) SCC 335 in which this Court observed as under:

> ".....that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act accordingly to its whims or caprice."

35. The learned counsel for the State also submitted that, in the instant case, the FIR was not only registered under section 420 IPC but under sections 3, 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

36. He also placed reliance on the case of Rajesh Bajaj v. State NCT of Delhi & Others (1999) 3 SCC 259, in which this Court, while dealing with section 482 Cr.P.C. has held as under:

> "It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten

> to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence".

37. The learned counsel for the State further submitted that the mere settlement of the case with the complainant on whose complaint the initial FIR was lodged does not dislodge a criminal prosecution by the State. Several other witnesses exist who would testify to the transactions and it would be up to the trial court to test the prosecution case.

38. Reliance was also placed on the case of Medchl Chemicals & Pharma (P) Ltd. v. Biological E.Ltd. & Ors.(2000) 3 SCC 269, wherein this Court observed as under:

> "Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint".

39. It is further submitted by the counsel for the State that the complaint clearly disclosed the offences under sections 3, 4, 5 and 6 of the Act and also offence under section 420 IPC.

40. Reliance has been placed by the learned counsel for the State that this Court in Kuriachan Chacko & Others v. State of Kerala (2008) 8 SCC 708, while dealing with the Prize Chits and Money Circulation Schemes (Banning) Act, has held that:

> "21. The Preamble of the 1978 Act declares that it has been enacted "to ban the promotion or conduct of prize chits and money circulation schemes and for matters connected therewith and incidental thereto".

22. Section 2 is legislative dictionary and defines certain terms. The phrase "money circulation scheme" is defined in clause (c) which reads as under:

> 2.(c) `money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

In this case, it was further held that:

> "39. We are unable to agree with the learned counsel. The courts below rightly held that prima facie case had been made out against the accused. Both the ingredients necessary for application of Section 2(c) of the Act are present in the case on hand. The trial court, for coming to that conclusion, referred to certain documents. The advertisement clearly declared that a member would get double the amount when after his enrolment, two members were enrolled under him and thereafter, 4 other persons were enrolled and after the enrolled 4 persons, 8 persons were enrolled under them. Thus, only after 14 persons under the first enrolled person become members under the Scheme, the first person would get Rs.1250 i.e. double the amount of Rs.625 (1+2+4+8). The trial court also noted that Kuriachan Chacko (Accused 1) who proposed the project for implementation, described how the project would work from which also it is clear that the double amount will be given to a person who purchases a unit only after 14 persons are enrolled subsequent to him."

41. We have carefully considered the rival contentions. It emerges that:

> a) In the instant case, the appellant ceased to be a Director of the company from 27.12.1997 whereas the alleged offences, if any, were committed during the period from 24.5.1998 to 17.9.1999.

b) Admittedly, there are no allegations against the appellant in the First Information Report.

c) The company had invited investment from the depositors to invest in the business/benefit funds after receiving due approval of the scheme from the Reserve Bank of India. Therefore, in any event, the element of cheating as alleged cannot be made out by any stretch of imagination.

d) The complainant/respondent no.2 submitted in writing to this Court that he does not want to proceed against the appellant because according to him the appellant has been inadvertently included as an accused by the Investigating Officer. He further mentioned in the letter that he had already received 55% of the deposited amount from the Official Liquidator and he did not want to proceed against the appellant.

e) Even assuming that there could have been a vicarious liability thrust on the appellant, even then there cannot be any such vicarious liability in absence of any allegations and material to show that the appellant was in-charge of or responsible for the conduct of the company's business which had given rise to the offence. From any angle of the matter, the appellant cannot be compelled to face the criminal trial in this case.

42. The inherent power should not be exercised to stifle the legitimate prosecution but at the same time no person be compelled to face criminal prosecution if basic ingredients of the alleged offence against him are altogether absent.

43. On consideration of the totality of the facts and circumstances of this case, the impugned judgment of the High Court is set aside and the appeal is allowed and the proceedings initiated

against the appellant on the basis of the complaint registered as CC 22656 of 2001 pending before the Xth Addl. Chief Metropolitan Magistrate, Bangalore, are quashed.

44. As a result, this appeal is allowed.

.....J. (Dalveer Bhandari) .....J. (A.K. Patnaik) New Delhi;

August 12, 2010.