

ITEM NO.32

COURT NO.16

SECTION II-C

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (Crl.) No.7620/2024

(Arising out of impugned final judgment and order dated 08-04-2024 in CRMP No.2118/2023 passed by the High Court of Chhatisgarh at Bilaspur)

AMIT KUMAR SHRIVASTAVA

Petitioner(s)

VERSUS

STATE OF CHHATTISGARH & ORS.

Respondent(s)

(With IA No.124879/2024-EXEMPTION FROM FILING O.T.)

Date : 01-07-2024 These matters were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE UJJAL BHUYAN
(VACATION BENCH)**

**For Petitioner(s) Mr. Sameer Shrivastava, AOR
Ms. Yashika Varshney, Adv.**

For Respondent(s)

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

- 1 The petitioner is sought to be prosecuted for the offence punishable under Section 10 of the Chhattisgarh Protection of Depositors' Interest Act 2005 (for short 'the Act of 2005') along with relevant offences under the Indian

Penal Code. In this regard, a First Information Report came to be registered at Police Station Supela, District – Durg (CG), being Crime No 596 of 2015. Upon completion of the investigation, charge-sheet came to be filed which culminated in Special Case PDI Act/1/2016 pending as on date in the court of the Special Judge (District & Sessions Judge), District Durg, Chhattisgarh.

- 2 It appears from the materials on record that the petitioner herein preferred an application before the Special Judge seeking discharge so far as the offence under Section 10 of the Act of 2005 is concerned. The Special Judge rejected such application.
- 3 Thereafter, the petitioner preferred Criminal Miscellaneous Petition No 2118 of 2023 in the High Court with a prayer that the prosecution deserves to be quashed so far as Section 10 of the Act of 2005 is concerned. The High Court declined to interfere and rejected the application.
- 4 In such circumstances, the petitioner is before this Court.
- 5 We have heard Mr Sameer Srivastava, counsel for the petitioner at length.
- 6 Mr Srivastava took us through the relevant provisions of the Act of 2005. The State Act of 2005 came to be enacted to protect the deposits made by the public in the financial establishment and matters connected therewith or incidental thereto. Section 2(h) of the Act of 2005 defines ‘financial establishment’. Section 2(i) defines ‘fraudulent default’. The same reads thus:

“Fraudulent default” means any financial establishment, which fraudulently defaults any repayment of deposits on maturity and/or any benefit in the form of interest, bonus, profit or dues in any other form as promised or on maturity or fraudulently fails to render services as assured against the deposit.”

- 7 Section 4 of the Act of 2005 provides for notifying a 'special court'. Section 5 states that the State Government may by notification appoint any authority not below the rank of a District Magistrate as competent authority. Section 7 is with regard to the attachment of properties on default of return of deposits, power of special court regarding attachment. Section 7 reads thus:

“Attachment of properties on default of return of deposits, power of special court regarding attachment-

- (1) Where the competent authority is satisfied,-
 - (i) Upon complaints received from depositors or otherwise, that any financial establishment has fraudulently defaulted.
 - (ii) That any financial establishment is acting in a calculated manner with an intention to defraud the depositors and such financial establishment is not likely to return the deposits, the competent authority may, in order to protect the interests of the depositors of such financial establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person or establishment, or if it appears that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment or the promoter, partner, director, manager or member of the said financial establishment, as the competent authority may think fit and publish the order in local newspaper of the area.
- (2) The competent authority shall apply within fifteen days from the date of the order to the special court for making the ad-interim order or attachment absolute.
- (3) The competent authority may also make an application to any special court or designated court or any other judicial forum established or constituted or entrusted with the powers by any other State Government for adjudicating any issue or subject pertaining to any money or assets of a financial establishment under any similar enactment in

respect of money or property or assets belonging to or ostensibly belonging to a financial establishment or any person notified under the Act situated within the territorial jurisdiction of that special court or designated court or any other judicial forum as the case may be, for passing appropriate orders to give effect to the provisions of the Act.

- (4) Upon receipt of an application under sub-section (2) of Section (7), the special court shall issue show cause notice accompanied by copy of application filed by the competent authority to the financial establishment or any other person whose property is attached that why the order of attachment should not be made absolute.
- (5) Any person having any interest or claim in the property attached under sub-section (1) may apply to the special court within 45 days of the order of attachment for their claim, after receiving the application/objection the special court shall, after giving an opportunity of being heard to the applicants and the competent authority, may make such order as deem fit.
- (6) For hearing of application/objection provision of the Code of Civil Procedure, 1908 shall be applicable.
- (7) If no cause is shown and no objections are made on or before the specified date, the special court shall forthwith pass an order making the ad-interim order of attachment absolute.
- (8) The special court may at the time of passing the final order pass an order of attachment absolute or in part. In making such order the special court shall not release such part of property so attached as is necessary for repayment to depositors.
- (9) The special Court may, on application by the competent authority, pass such order or issue such direction as may necessary for sale of property attached and for distribution among the depositors of the money realised from such sale.
- (10) Where an application is made by any person duly authorised or specified by any other State Government under similar enactment empowering him to exercise

control over any money or property or assets attached by that State Government, the special court shall exercise all its powers, as if such an application were made under the Act and pass appropriate order or direction on such application, so as to give effect to the provisions of such enactment.”

- 8 A plain reading of Section 7 would indicate that if the competent authority is satisfied upon complaints received from the depositors or otherwise that any financial establishment has fraudulently defaulted, it has the power to pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person or establishment. The next step in the process is to get such ad-interim order of attachment made absolute through the special court.
- 9 Sub-section (4) of Section 7 stipulates that upon receipt of an application under sub-section (2) of Section 7, the special court shall issue show cause notice accompanied by copy of application filed by the competent authority to the financial establishment or any other person whose property is attached calling upon to show cause why the order of attachment should not be made absolute.
- 10 Thus, the power is ultimately with the special court to pass an order of attachment absolute or in part. We are informed that there is an order of attachment of assets of the financial establishment owned by the petitioner and the same is the subject matter of challenge as on date before the High Court.
- 11 Section 10 of the Act of 2005 provides for punishment for defaults by financial establishment. Section 10 reads thus:

“Punishment for defaults by financial establishment-
Where any financial establishment fraudulently defaults or any financial establishment acts in a calculated manner with an

intention to defraud the depositors; every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs or of such financial establishment shall be punished with imprisonment for a term which shall not be less than 3 years but may extend to ten years and with fine which not be less than one lakh rupees but may extend to five lakhs rupees and such financial establishment shall also be liable to fine not less than three lakhs rupees but may extend to ten lakhs rupees.

- 12 Section 13 provides for the procedure and powers of special court regarding offences. The same reads thus:

“Procedure and powers of Special Court regarding offences- For trial of the offence the procedure prescribed for the warrant trial in the Code of Criminal Procedure, 1973 (No.2 of 1974) shall be applicable and special court may take cognizance of the offence without being committed the case to it.”

- 13 Section 15 bars the applicability of Section 438 of the Code of Criminal Procedure. Section 16 provides for an appeal against the order passed by the special court before the High Court.
- 14 The principal argument canvassed on behalf of the petitioner is that the police could not have registered the FIR for the offence alleged to have been committed under the provisions of the Act of 2005. The argument is that the police has no jurisdiction to investigate so far as the offence under the Act of 2005 is concerned. The argument proceeds further that but for the charge-sheet filed for the so-called offence under Section 10 of the Act of 2005, the order of attachment passed under Section 7 of the Act of 2005 could not have been passed.
- 15 The attempt on the part of the petitioner is to convince this Court that Section 10 of the Act of 2005 should go from the charge-sheet. In other words, the High Court ought to have discharged the petitioner in so far as

Section 10 of the Act of 2005 is concerned. This is to take care of the order of attachment of the properties which has been passed and is now a subject matter of challenge before the High Court.

- 16 Counsel for the petitioner placed reliance on one order passed by the High Court of Chhattisgarh dated 20 September 2023 in CRR No 1168 of 2017, wherein the High Court observed as under:

“9. From perusal of the order impugned herein, it is apparent that the learned Court below after taking into consideration the relevant provisions of the Act of 2005, i.e. Section 5 which is in regard to ‘competent authority’, Section 6 which deals with ‘intimation of business’, Section 7 which deals with ‘attachment of properties on default of return of deposits, power of special court regarding attachment’, Section 8 which deals with ‘attachment of property of malafide transferees’, Section 9 which is in respect of ‘security in lieu of attachment’ and Rule 5 of the Chhattisgarh Ke Nikehspakon Ke Hiton Ka Sanrakshan Niyam, 2015 which deals with ‘procedure on receipt of complaint’.

10 The learned Sessions Judge has observed that under the provisions of the Act of 2005, for protection of the interest of any depositors the proceedings should be initiated before the District Magistrate and if the competent authority finds that the financial establishment, Company etc. has made a fraudulent default, then in this regard, under this special Act, prosecution can be initiated. Under Section 10 of the Act of 2005, the action for punishment for defaults by financial establishment can be initiated. Therefore, under Section 4(2) of the Code of Criminal Procedure, 1973, the District Magistrate, Durg has neither registered any offence against the Sunshine Hightech Infracom Limited nor has been sent to the Court below. Therefore, the respondents were rightly discharged from Section 10 of the Act of 2005. So far as Sections 420, 409 and 34 of the IPC mentioned in the charge-sheet are concerned, the Court below has rightly observed that the jurisdiction to try such matters lies with the Judicial Magistrate First Class. Therefore, the Court below has rightly remanded the to the Chief Judicial Magistrate, Durg. The petitioner has failed to point out any illegality or

irregularity in the order passed by the Court below.

11. As a consequence, this revision petition fails. It is accordingly dismissed.”

17 This petition gives rise to the following questions:

- (i) Whether Section 10 of the Act of 2005 constitutes any offence under the Act or is only a punishing clause;
- (ii) What has Section 10 of the Act of 2005 to do with powers of attachment of properties under Section 7 of the Act of 2005;
- (iii) Whether the jurisdiction is only with the District Magistrate as the competent authority under the Act to initiate necessary proceedings under the Act of 2005 or the police also has the power to register an FIR and file charge-sheet for the offence under the Act of 2005;
- (iv) Section 13 of the Act of 2005 provides for the procedural powers of the special court regarding the offences. Section 13 has been referred to above. It says that the trial so far as the Act of 2005 is concerned, shall be in accordance with the procedure prescribed for the warrant trial in the Code of Criminal Procedure and the special court may take cognizance of the offence without having the case committed to it. The question is on what basis the special court may take cognizance of the offence without having the case committed to it; and
- (v) Whether a complaint under Section 200 of the Code of Criminal Procedure lies at the instance of the District Magistrate as the competent authority or whether Police can file charge-sheet straight way before the Special Court to enable the Special Court to take cognizance on the same without the order of committal.

- 18 Issue notice, returnable in four weeks.
- 19 Having regard to the aforesaid questions of law that fall for the consideration of this Court, further proceedings of Special Case No PDI ACT/1/2016, pending before the Special Judge (District & Sessions), District -Durg, shall remain stayed.
- 20 Liberty granted to serve the Standing Counsel for the State of Chhattisgarh.

(CHETAN KUMAR)
A.R. -cum-P.S.

(POOJA SHARMA)
Court Master