



Crl.OP(MD).No.15445 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.08.2026

ORDER PRONOUNCED ON : 19.08.2026

CORAM

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

Crl.OP.(MD)No.15445 of 2026
and Crl.MP(MD).No.14992 of 2026

Mustafa

....Petitioner/Sole Accused

Vs

1.State of Tamil Nadu Represented by
The Inspector of Police
Economic Offences Wing
Thanjavur District
Crime No.03 of 2023

....1st respondent/Complainant

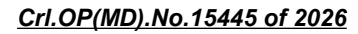
2.Firojinnasha

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records relating to the impugned First Information Report in Crime No.03 of 2023 on the file of the respondent police and quash the same.

For Petitioner : Mr.K.P.S.Palanivelrajan
Senior Counsel
for Mr.V.Malaiyendran

For Respondents : Mr.P.Samuel Gunasingh
Government Advocate (Crl.side) for R1



ORDER

The petitioner, arraigned as the sole accused in Crime No.03 of 2023 on the file of the first respondent police, has approached this Court seeking to quash the First Information Report registered against him for the offences punishable under Sections 406 and 420 of the Indian Penal Code and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (hereinafter referred to as "the TNPID Act").

(A) Factual Matrix:

2. The narration in the First Information Report is to the effect that the petitioner, who was carrying on a transport business, had invited investments from the residents of his locality holding out an assurance of handsome returns. It is the case of the prosecution that on 10.01.2021 a sum of Rs. 5,00,000/- was received by the petitioner from the defacto complainant, and a consent deed came to be executed whereunder the petitioner undertook to pay interest at Rs.12,500/- per month. Subsequently, on 03.02.2021, a further sum of Rs.3,00,000/- is stated to have been received, followed by a similar instrument promising interest of Rs.7,500/- per month. Thus, an aggregate sum of Rs.8,00,000/- came to be invested in two instalments, against a monthly commitment of Rs.20,000/-. The grievance ventilated is that the said



monthly payments were honoured only for three months, and thereafter the petitioner is alleged to have put forth untenable explanations on every occasion when a demand was raised. It is further alleged that when the return of the principal sum of Rs.8,00,000/- was insisted upon, the petitioner held out a threat to the life of the defacto complainant.

3. It is relevant to notice that the matter was originally taken on file by the District Crime Branch, Thanjavur, in Crime No.11 of 2022 on 15.05.2022, for the offences under Sections 406 and 420 IPC. The investigation was thereafter transferred to the first respondent, whereupon the impugned First Information Report in Crime No.03 of 2023 came to be registered for the said offences read with Section 5 of the TNPID Act.

(B) Submissions on either side :

4. The learned Senior Counsel appearing for the petitioner would, at the foremost, contend that the ingredients of Sections 406 and 420 IPC are mutually destructive and cannot stand together upon the self-same set of facts. In support of the said proposition, reliance was placed upon the decision of the Hon'ble Supreme Court in *Arshad Neyaz Khan v. State of Jharkhand and another*, reported in **2025 SCC OnLine SC 2058**.

5. It was next urged that the petitioner is neither a company nor a partnership firm, and therefore does not answer the description of a "financial



establishment" within the meaning of Section 2(3) of the TNPID Act. On that premise, it was submitted that the invocation of the provisions of the said Act is wholly without jurisdiction.

6. The learned Senior Counsel would further submit that, having regard to Section 34 of the Banning of Unregulated Deposit Schemes Act, 2019, (BUDS Act), the said enactment cannot be pressed into service alongside the TNPID Act. It was contended that the investigating agency rests its case upon the consent deeds said to have been executed at the time of receipt of the amounts, and that even upon accepting the existence of such instruments, what emerges is a transaction civil in character. Mere failure to repay a sum received under a document, it was urged, would not clothe the transaction with a criminal complexion.

7. Reliance was also placed upon the decision of the Hon'ble Supreme Court in *The Correspondent, RBANMS Educational Institution v. B. Gunashekar and another*, reported in **2025 SCC OnLine SC 793**, and in particular upon paragraph 18.1 thereof, to contend that wherever a cash transaction exceeds Rs.2,00,000/-, the Court is obliged to place the jurisdictional Income Tax Department on notice so as to enable verification of the transaction and of the infraction of Section 269ST of the Income Tax Act, and to permit such authority to proceed in accordance with law.



8. It was further submitted that where unaccounted money is parted with under the guise of an investment and a criminal complaint is thereafter set in motion upon default in payment of principal or interest, what is in truth sought is the recovery of black money through the instrumentality of the State. In this connection, the decision of this Court in *R.V. Venkateshan v. Sanjay and others*, reported in **2026 SCC OnLine Mad 5000**, wherein a direction was issued to the trial Court to intimate the Income Tax Department in respect of a suit laid for recovery of Rs.80,00,000/-, was pressed into service. It was added that the transaction being one of money simpliciter, a legal notice calling for refund ought to have preceded any complaint, and that in the absence thereof the defacto complainant could not have rushed to the police station to set the criminal law in motion under Sections 406 and 420 IPC.

9. Learned Senior Counsel also invited the attention of this Court to the decision of the Hon'ble Supreme Court in *Y. Balaji v. Karthik Desari and another*, reported in **(2024) 19 SCC 625**, rendered in the context of the Prevention of Money Laundering (Amendment) Act, 2009, as well as to the decision in *Ramesh Kumar v. State (NCT of Delhi)*, reported in **(2023) 7 SCC 461**, for the proposition that where a dispute is predominantly civil in character, the machinery of the criminal law cannot be resorted to for its



Crl.OP(MD).No.15445 of 2026

resolution, notwithstanding an undertaking on the part of the accused to make payment. On the strength of the above, quashment was prayed for.

10. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that Section 2(3) of the TNPID Act takes within its sweep an individual as well, provided he carries on the business of receiving deposits, and that the invocation of the said Act therefore cannot be faulted. It was clarified across the Bar that the investigating agency does not propose to invoke the provisions of the BUDS Act. It was further submitted that Sections 406 and 420 IPC have been invoked at the threshold, and it is only upon completion of the investigation that it can be ascertained which of the said provisions is attracted; indeed, even at the stage of framing of charges, it would be open to the trial Court to frame a charge under Section 406 or under Section 420 IPC, as the materials may warrant. Hence, the invocation of both provisions at the stage of the First Information Report cannot be found fault with.

11. As regards the submission founded upon Section 269ST of the Income Tax Act, the learned Government Advocate would submit that the question would arise as and when the competent authority initiates proceedings for disbursement of monies to the depositors as contemplated under Section 7(8) of the TNPID Act, and that it is not open to the petitioner



to overawe the depositors by holding out the prospect of a reference to the Income Tax Department. It was brought to the notice of this Court that as many as 417 complaints have been received as against the petitioner, involving an aggregate sum of about Rs.28 crores, and that two Government Orders have already been issued attaching the properties of the petitioner in exercise of the power under Section 3 of the TNPID Act. On that footing, it was prayed that the investigation may not be interdicted at this nascent stage, a prima facie case having been made out.

12. Heard the learned counsel appearing on either side and perused the materials placed on record.

(C) Discussion:

13. The foremost submission advanced on behalf of the petitioner is that Sections 406 and 420 IPC, being antithetical to one another, cannot co-exist upon the same set of facts. In the case on hand, the petitioner was admittedly carrying on a transport business and had gathered investments from several residents of the locality upon the execution of consent deeds. Whether the petitioner harboured an intention to cheat the depositors at the inception is a matter which can be ascertained only upon the culmination of the investigation. The mere circumstance that both the provisions have been invoked by the investigating agency cannot, by itself, furnish a ground for



quashment of the First Information Report.

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14. In so far as the contention founded upon Section 34 of the BUDS Act is concerned, the learned Government Advocate (Crl. Side) has fairly and unequivocally submitted that the said enactment is not proposed to be invoked as against the petitioner. That being so, the said contention does not survive for consideration at this stage.

15. It was then urged that the consent deeds referred to in the First Information Report are fabricated, and that even assuming their existence, they partake of the character of loan documents, rendering the transaction civil in nature and the initiation of criminal proceedings impermissible. However, the allegation on record is that the petitioner collected deposits upon an assurance of enhanced returns at stipulated intervals, coupled with a default in repayment of both the principal and the interest.

16. Had the transaction been confined to a solitary individual, it may well have been open to construe it as a loan. In the present case, however, no fewer than 417 complaints have been received by the respondent police. A perusal of the consent deed relied upon also indicates that the instrument is not one of loan, but one of investment carrying an assurance of returns upon the expiry of a stipulated period. Where the statute itself declares the failure to honour the commitment of repayment of deposits and interest to be an



offence, it is not open to the petitioner to contend that the transaction is one of a purely civil character.

17. Reliance was placed by the learned Senior Counsel upon the decision in *The Correspondent, RBANMS Educational Institution v. B. Gunashekar and another*, reported in **2025 INSC 490**, to contend that any cash transaction in excess of Rs.2,00,000/- offends Section 269ST of the Income Tax Act and must therefore be reported forthwith to the Income Tax Department. A reading of Section 269ST, however, discloses that the said provision is concerned with the receipt of monies generally in excess of Rs. 2,00,000/-.

18. Section 269SS of the Income Tax Act, on the other hand, deals with cash transactions exceeding Rs.20,000/- by way of loan or deposit. The transaction in question would therefore fall within the compass of Section 269SS and not Section 269ST. A contravention of Section 269SS visits the recipient — in the present case, the petitioner — with a penalty, and that too only where he is unable to establish reasonable cause.

19. It bears emphasis that a breach of Section 269SS does not render the transaction void or irrecoverable; it merely fastens a penalty upon the person who receives money in cash beyond the prescribed threshold.

20. The Hon'ble Supreme Court in a judgment reported in **2025 SCC**



Online SC 2069 (Sanjabij Tari Vs. Kishore S.Borcar and another) while

considering the violation of Section 269SS Income Tax Ac in Paragraph Nos.

19 and 20 has held as follows:

“19.Recently, the Kerala High Court in P.C.Hari Vs. Shine Varghese; has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short ‘ IT Act, 1961 ’) is not a ‘legally enforceable debt’ unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the Income Tax Act, 1961 is subject to a penalty only under Section 271D of the Income Tax Act, 1961. Further neither Section 269SS nor 271 D of the Income Tax Act, 1961 states that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act, or rebut the presumptions under Sections 118 and 139 of the Negotiable Instruments Act, because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of ‘legally enforceable debt’ cannot



Crl.OP(MD).No.15445 of 2026

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be countenanced. Accordingly, the conclusion of law in P.C. Hari (supra) is set aside.”

21. In the light of the above pronouncement, it is evident that the petitioner cannot take shelter under Section 269SS of the Income Tax Act so as to extricate himself from the criminal liability arising under the TNPID Act. The question of issuance of a legal notice for recovery of money, or of the institution of a civil suit, would arise only if the transaction were civil in nature. Once the transaction is declared to be an offence under Section 5 of the TNPID Act, neither the absence of a legal notice nor the failure to resort to civil proceedings can constitute a ground for quashing the First Information Report. As regards the plea that the consent deed is a fabricated document, the same is eminently a matter for trial and cannot be gone into at the stage of quashment.

(D) Conclusion:

22. In view of the foregoing deliberations, and there being specific overt acts attributed to the petitioner, this Court is not inclined to interdict the process of investigation. The Criminal Original Petition is devoid of merits and is accordingly dismissed. Consequently, the connected miscellaneous petition is closed.

19.08.2026.



Crl.OP(MD).No.15445 of 2026

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To

1.The Inspector of Police
Economic Offences Wing
Thanjavur District
Crime No.03 of 2023

2.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai



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Crl.OP(MD).No.15445 of 2026

R.VIJAYAKUMAR, J.

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Crl.OP.(MD)No.15445 of 2026
and Crl.MP(MD).No.14992 of 2026



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Crl.OP(MD).No.15445 of 2026

19.08.2026