

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.8.2015 AND PRONOUNCED ON: 28.8.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1227 of 2015

M/s Helios and Matheson
Information Technology Ltd.,
rep. by its Authorized Signatory
Mr.D.Sathasivam.

...Appellant

Versus

The State rep. by the Deputy
Superintendent of Police,
DOW-II, Anna Nagar,
Chennai - 600 040.

...Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against
the order of this court dated 6.8.2015 in W.P.No.14664 of 2015.

W.P.No.14664 of 2015 has been filed under Article 226 of the
Constitution of India, praying for a Writ of declaration declaring
that the FIR in Crime No.5 of 2015 registered on 1.4.2015 on the
file of the respondent police as without jurisdiction and therefore
ultra vires and non est in law.

For Appellant

: Mr.P.S.Raman Sr.Counsel for
Mr.Vaibhav R.Venkatesh.

JUDGMENT

V.RAMASUBRAMANIAN, J

This writ appeal arises out of an order passed by the learned
single Judge dismissing a writ petition filed by the appellant,
praying for a declaration that a First Information Report registered

against them in Crime No.5/2015 on the file of the Economic Offences Wing of the City Police was without jurisdiction.

2. Heard Mr.P.S.Raman, learned Senior Counsel for the appellant.

PRELUDE

3. It appears that the appellant herein was originally incorporated as a Public Limited Company under the name and style of "Express Financial Limited", having its office at T.Nagar, Chennai. It was incorporated under the Companies Act, 1956 on 8.3.1991. Subsequently, the name of the company was changed to its present form namely "Helios and Matheson Information Technology Limited", with effect from 29.4.1999.

4. Even according to the appellant, they were accepting deposits from the public as well as the shareholders for over 10 years, in terms of Section 58-A of the Companies Act, 1956 and that they were very prompt in repayment.

5. But after the replacement of The Companies Act, 1956 by the Companies Act, 2013, a new set of provisions from Sections 73 to 76 in Chapter V dealing with "Acceptance of Deposits by Companies" have come into force.

6. Under Section 74(1) of the Companies Act, 2013, every company which has accepted a deposit before the commencement of the 2013 Act, was obliged to file a statement with the Registrar of Companies, if the amount of such deposit or any interest due thereon, remained unpaid on the commencement of the Act. There was also a prohibition under the 2013 Companies Act, for such companies from accepting new deposits, unless two conditions namely (i) shareholders' approval at an Annual General Meeting and (ii) a credit rating of A++ by CRISIL, are fulfilled.

7. Even according to the appellant, they could not fulfil both the conditions required for acceptance of fresh deposits under the Companies Act, 2013. The appellant was also admittedly in default in repayment of the deposits as well as the interest, to a huge number of depositors, as on the date of commencement of the 2013 Companies Act. It is the appellant's own case that they were in the habit of receiving fresh deposits for repayment of the old deposits and this chain was cut, at the commencement of the 2013 Companies Act.

8. As a consequence, several complaints came to be lodged with the City Police and it appears that during the period from September

2014 to January 2015, the police started investigating into the complaints. The first ever First Information Report was registered against the appellant in Crime No.02 of 2015 on 29.1.2015 by one Mr.D.Ramalingam. It appears that the amount due to the said D.Ramalingam was only around Rs.2,19,020/- and this money was settled by the appellant.

9. Thereafter, the appellant moved an application before the Company Law Board under Section 74(2) of the Companies Act, 2013. The application was actually filed on 27.3.2015. The reliefs sought in the application were:

(a) to extend the time for repayment of the deposits matured on or before 31.3.2014 by a further period of 6 months; and
(b) to extend the time for repayment of the deposits matured after 31.3.2014 by a further period of one year.
But, by the time the application under section 74 (2) was filed, the period of 6 months sought by the appellant in para 16(a) of their petition before the Company Law Board had already expired. The prayer sought in para 16(b) was to expire in a period of 4 days, when the petition under Section 74(2) of the Companies Act, 2013 was presented.

10. While so, on 1.4.2015, the Deputy Superintendent of Police, Economic Offences Wing-II, Anna Nagar, received a complaint from one Dr.K.Ranjit Chitturi alleging that the appellant herein received deposits from investors for durations of 12, 24 and 36 months and that the defacto complainant himself made 5 deposits to the total tune of Rs.59,50,000/- during the period from 11.7.2011 to 16.12.2013. It was claimed by the defacto complainant that 3 out of 5 deposits matured on 14.5.2014, 12.6.2014 and 11.7.2014 respectively, but the appellant failed to repay the deposit amount.

11. The Deputy Superintendent of Police, Economic Offences Wing, Anna Nagar registered a First Information Report in Crime No.05/2015 for an alleged offence under Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 read with Section 420 of the Indian Penal Code. In the First Information Report, the appellant herein as well as its Directors were cited as accused. Immediately after the registration of the FIR in Crime No.5 of 2015, the Managing Director and 2 other directors of the appellant were arrested and remanded to judicial custody on 1.4.2015.

12. Therefore, the appellant moved a writ petition in W.P.No.10015 of 2015, challenging the Constitutional validity of the

Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997, in the light of the provisions of the Companies Act, 2013.

13. It is relevant to point out here that as soon as the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 was enacted, the Constitutional validity of the same was challenged way back in 1999, but the challenge was thrown out by a learned judge of this Court in Thiru Muruga Finance v. State of Tamil Nadu [2000 (2) CTC 609]. Despite this decision, a fresh challenge was made to the Constitutional validity of the Act, once again in the year 2006 and a Full Bench of this Court upheld the Act for a second time in S.Bagavathy v. State [2007 (2) CTC 207].

14. Therefore, the writ petition W.P.No.10015 of 2015 filed by the appellant herein, challenging the Constitutional validity of Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 was actually a third round of challenge (though not by the appellant) to the very same Legislation. Realizing the futility of such a challenge, during the course of hearing of the writ petition, the appellant withdrew the writ petition with liberty to raise all the contentions, in a quash petition to be filed under Section 482 of the Code of Criminal Procedure, seeking the quashing of the FIR in Crime No.05 of 2015.

15. Thereafter, the appellant moved a petition in Crl.O.P.No. 9982 of 2015 under Section 482 of the Code of Criminal Procedure, for quashing the FIR in Crime No.05 of 2015. It is claimed by the appellant that the quash petition was also withdrawn by them, leaving all the contentions open to be raised at the appropriate forum and at the appropriate stage. But the records reveal that the quash petition was dismissed as withdrawn on 20.4.2015 by an order which reads as follows:

"The learned counsel appearing for the petitioners has sought permission of this Court to withdraw the petition and he had also made an endorsement to that effect.

2. In view of the endorsement made by the learned counsel for the petitioners, this Criminal original Petition is dismissed as withdrawn with liberty to the petitioner to put forth all the contentions which is raised today before the appropriate forum. Consequently, connected Miscellaneous Petitions are closed"

16. After (i) withdrawing the writ petition W.P.No. 10015 of 2015 challenging the Constitutional validity of the Tamil Nadu Act, with liberty to raise all contentions in the quash petition and (ii) after withdrawing the quash petition itself with liberty to merely put forth all contentions before the appropriate forum, the appellant filed a writ petition under Article 226 of the Constitution in W.P.No.14664 of 2015 praying for the issue of a writ of declaration that the FIR in Crime No.5 of 2015 was without jurisdiction and ultra vires. We do not know how after the withdrawal of the quash petition under section 482 of the Code, another quash petition under Article 226 is maintainable on the specious plea that they had obtained liberty to move the appropriate forum.

17. Be that as it may, the writ petition for quashing the FIR, has now been dismissed by a learned Judge, by an order passed on 6.8.2015. Aggrieved by the dismissal of their writ petition, the appellant is before us.

18. Thus, in essence, the litigation before us is virtually a third attempt on the part of the appellant to stall an investigation by the respondent police, into serious allegations of defrauding of thousands of depositors to the tune of Crores of rupees. The first attempt made by the appellant was in the form of a writ petition challenging the Constitutional validity of the Tamil Nadu Act. The second attempt made by the appellant was in the form of a petition under Section 482 of the Code of Criminal Procedure, to quash the FIR. While the first writ petition was withdrawn with liberty to raise all contentions in the quash petition, the quash petition itself, is said to have been withdrawn with liberty to raise all the contentions at the appropriate forum. Therefore, the present attempt, which is the third attempt in succession, to stall an investigation, required a careful scrutiny and this is what was done by the learned Judge, before coming to the conclusion that the writ petition was devoid of merits.

TURN OF EVENTS BEFORE THE LEARNED JUDGE

19. It is seen from the affidavit filed by the appellant in support of the writ petition as well as the summary of arguments and additional written arguments filed by the appellant before the learned Judge that the appellant raised two fundamental issues for seeking a declaration that the First Information Report was without jurisdiction. They are:

(i) Whether the company which is not in the business of receiving deposits, but which received deposits in terms of the provisions of the Companies Act, 1956, can be prosecuted for an offence under Tamil

Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, hereinafter referred to as the TNPID Act, especially when there is a specific provision under Section 74(2) of the Companies Act, 2013 enabling the company to approach the Company Law Board for extension of time to repay the deposits? and
(ii) Whether the police would have jurisdiction to entertain and investigate the matters under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997, without the sanction of the competent authority ?

20. On the first question, the learned single Judge, to some extent, agreed with the contention that unless a company was carrying on the business of receiving deposits, it would not come within the definition of the expression "financial establishment" under Section 2(3) of the TNPID Act, 1997. But, nevertheless the learned Judge found from the website of the appellant company that the same contained a representation to the public that the appellant was engaged in the business of banking and financial services. The Directors' report for 2012-2013 filed by the appellant with the Registrar of Companies also contained an indication that the business focus of the appellant continued to be of banking and financial services. Therefore, the learned Judge rejected the first contention of the appellant.

21. On the second contention, heavy reliance was placed by the appellant, on the fact that in P.S.Chellamuthu v. State [SLP (Criminal) No.53/2009], the Supreme Court was already seized of the issue as to whether the police would have jurisdiction to entertain and investigate the matters under the TNPID Act, 1997 without the sanction of the competent authority. One learned Judge of this Court answered this question in the affirmative and the Supreme Court not only granted leave on the same question of law, but also granted stay. Consequently, several financial establishments have obtained stay of investigation from this Court and hence, the appellant contended on the second question that he was also entitled to the same benefit. But the said argument was rejected by the learned Judge on the basis of the law laid down by the Supreme Court in several decisions including the one in Shree Chamundi Moped Limited v. Church of South India Trust Association [1992 (3) SCC -1], wherein the Supreme Court held that the grant of leave and the grant of an interim order by the Supreme Court as against a judgment of the High Court does not have the effect of wiping out the law laid down by the High Court. At the most, it can be said that the issue had not attained finality with an authoritative pronouncement from the Supreme Court.

22. The appellant had also raised a few other contentions before the learned single Judge, but they were all incidental to the above two main grounds of attack. All those ancillary grounds fell like a pack of cards, once the two main grounds indicated above were decided by the learned Judge against the appellant. Therefore, aggrieved by the dismissal of their writ petition, the appellant is before us.

CONTENTIONS BEFORE US

23. Drawing our attention to the provisions of Section 58-A of the Companies Act, 1956 and Section 74 of the Companies Act, 2013, it is first contended by Mr.P.S.Raman, learned Senior Counsel for the appellant that it was not the intention of the State Legislature to make all kinds of companies liable for prosecution under the TNPID Act, 1997, if for some reason they become unable to repay the deposits. Since Section 2(3) of the TNPID Act defines a "financial establishment" to include only those companies carrying on the business of receiving deposits under any scheme or arrangement, it is contended by Mr.P.S.Raman, learned Senior Counsel that companies like the petitioner herein, who are engaged in the business of providing software solutions, cannot be prosecuted under the Act. Contending that such an interpretation would expose even companies like Tata Consultancy Services Limited, Cognizant Technology Limited and Infosys, to the risk of being prosecuted under the TNPID Act, Mr.P.S.Raman, learned Senior Counsel submitted that the object of the Act could not be lost sight of.

24. It is the further contention of Mr.P.S.Raman, learned Senior Counsel that to some extent, the learned Judge agreed with their contention that all kinds of companies would not come within the definition of the expression "financial establishment" under the TNPID Act. But the learned Judge proceeded on the basis of an information available in the website of the appellant to the effect that the appellant was also into Banking and Financial Services, without understanding that the same was nothing but an indication of the domain in which the appellant operated. In other words, it is the contention of the learned senior counsel for the appellant that what was mentioned in the website as well as the annual report as the business focus, had to be read together with the word "verticals". According to the appellant, they are engaged in the business of offering software solutions to customers who are in the banking and financial sector. The nature of the business carried on by the customers of the appellant was what indicated in the annual report on the website. The actual business of the appellant, according to the learned senior counsel, has to be understood in the context of what is horizontal and what is vertical in web portals.

25. The second contention of Mr.P.S.Raman, learned senior counsel for the appellant is that the scheme of TNPID Act, 1997 excludes the police to register, inquire and investigate into any complaint relating to the commission of an offence punishable under Section 5 of the Act. The power is vested only with the competent authority constituted under the Act. This very same question was decided against an accused in a quash petition in Crl.O.P. No.21711 of 2007 by a learned Judge of this Court by a judgment dated 4.12.2008. But, the Supreme Court not merely granted leave in SLP (Criminal) No.53 of 2009, but also granted a stay of operation and implementation of the said judgment on 8.1.2010 in P.S.Chellamuthu v. State. Based upon the stay so granted by the Supreme Court in P.S.Chellamuthu, several financial establishments approached this court and got the benefit of stay of investigation. In yet another case Saravana Thanga Nagai S. Thittam v. State, another Bench of the Supreme Court passed an order dated 2.12.2013 in SLP (Crl.) No.5088 of 2012, granting stay of further proceedings before the criminal court.

26. Therefore, the second contention of the learned senior counsel for the appellant is that the law laid down by a learned single Judge of this court in Crl.O.P.No.21711 of 2007 dated 4.12.2008 in the case of P.S.Chellamuthu v. State cannot any more be relied upon by the prosecution. According to the learned senior counsel for the appellant, the learned Judge ought to have at least stayed the investigation as against the appellant, till the Hon'ble Supreme Court finally decided the issue in P.S.Chellamuthu v. State.

27. We have carefully considered the above submissions. We shall take up these two contentions one after another, for the sake of clarity.

A BRIEF INTERLUDE

28. A brief interlude may be necessary before we proceed to test the merits and demerits of the above contentions.

29. As we have stated earlier, the appellant and its Directors came under the Police Scanner, in September, 2014. After calling upon the appellant to furnish details of deposits collected and not repaid, the police registered the first criminal complaint in Crime No.02 of 2015 on 29.1.2015 at the behest of a depositor by name D.Ramalingam. It appears that the amount payable to the said complainant was Rs.2,19,020/-. The appellant appears to have paid the said amount and hence the complaint was not investigated further.

30. Realising that the settlement of the deposit amount to one depositor would not resolve the larger problem relating to thousands of depositors, the appellant filed an application on 27.3.2015 before the Regional Bench of the Company Law Board under Section 74(2) of the Companies Act, 2013, praying for two reliefs. As we have indicated earlier, the first relief prayed in paragraph 16(a) was for extending the time for repayment of the deposits that matured for payment on or before 31.3.2014 by a further period of six months. The prayer in paragraph 16(b) was to extend the time for repayment of the deposits that mature on or after 31.3.2014 by a further period of one year.

31. But, before the Company Law Board could proceed with the hearing of the application under Section 74(2) of the Companies Act, 2013, a second complaint came to be lodged on 1.4.2015 by one Dr.Ranjit Chitturi, alleging non repayment of the deposits to the tune of Rs.59,50,000/-, the Economic Offences Wing registered the complaint in Crime No.05 of 2015 and started investigation in a serious manner.

32. The investigation revealed that the appellant was originally incorporated under the Companies Act, 1956 on 8.3.1991 with the name Express Financial Limited. But the name was changed on 29.4.1999 to what it is now. The investigation also revealed that the appellant has 7 subsidiary companies, some of which are also incorporated outside India.

33. As per the statement furnished by the Deputy Superintendent of Police, Economic Offences Wing before the learned single Judge, the appellant had engaged the services of several finance brokers such as (i) Bajaj Capital; (ii) Karvy Stock Brokering Limited; (iii) Mahavir Group; (iv) Mehta Finance Services Private Limited; (v) Almondz Global Securities Limited; (vi) R.K.Investments; (vii) Samantha Investments; and (viii) Western Securities, for mobilising fixed deposits from the public on commission basis. Through these agents, as well as directly from the public, the appellant had received a total amount of Rs.55,25,70,000/-, as deposits from 6540 depositors all over the country. Once the Economic Offences Wing started investigating into the crime No.05 of 2015, lot of complaints started pouring in. It appears that 745 depositors have given complaints alleging that they have been cheated to the tune of Rs.28,29,86,000/-. Many of the depositors are stated to be senior citizens.

34. The investigation also revealed that the appellant has debts due to 5 banks to the total tune of Rs.189,76,33,434/-. When the Economic Offences Wing froze the accounts of the appellant, they found that what was available with the banks was only a meagre amount of Rs.2,01,476/-.

35. As soon as the police activated the investigation and arrested the Managing Director and 2 other Directors, the appellant filed a writ petition in W.P.No.10015 of 2015 seeking a declaration that the provisions of the TNPID Act, 1997, are inapplicable to companies receiving deposits under the Companies Act (S.58 of the Old Act of 1956 and S.73-76 of the New Act of 2013) which are not 'Non Banking Finance Corporations' nor 'Financial Establishments'.

36. After facing hostile weather in court, the appellant withdrew the writ petition with liberty. That the appellant faced hostile weather could be well understood by the fact that the Constitutional validity of the Act was already upheld, first by a single Judge of this Court in Thiru Muruga Finance v. State of Tamil Nadu [2000 (2) CTC 609] and then by a Full Bench in a second attempt made in S.Bagavathy v. State [2007 (2) CTC 207]. The Judgment of the Full Bench upholding the Constitutional validity of the Act also received the seal of approval from the Supreme Court in K.K.Baskaran v. State [(2011) 3 SCC 793]. Therefore, the writ petition filed by the appellant in W.P.No.10015 of 2015 was nothing but an attempt at re-agitating the same issue and hence after finding that it was an exercise in futility, the appellant chose to withdraw the writ petition. The order of the Division Bench dated 7.4.2015 dismissing the said writ petition W.P.No. 10015 of 2015 is reproduced as follows:-

"After arguing at length, learned counsel for the petitioner seeks to withdraw the writ petition and states that he reserves liberty to move appropriate quashing proceedings, in which he will raise the issues, as are sought to be canvassed before this Court.

2.Writ petition is dismissed as withdrawn in aforesaid terms. No costs. Consequently, M.P.No.1 of 2015 is also dismissed"

37. In the meantime, three depositors came up before the Company Court and moved petitions in C.P.Nos.143 to 145 of 2015 under Section 433(e) and 434(1)(a) of the Companies Act, 1956, for winding up the appellant. Along with the petitions for winding up, the creditors also filed interlocutory applications for the appointment of a Provisional Liquidator. On the applications for the appointment of

Provisional Liquidator, the Company Court passed an order on 30.3.2015, directing the issue of notice to the appellant returnable by 07.4.2015.

38. While responding to those winding up petitions, the appellant claimed that they had already moved an application under Section 74 of the Companies Act, 2013 before the Company Law Board, praying for extension of time to repay the deposits. But unfortunately for the appellant, the Scheme of Chapter V of the Companies Act, 2013, is completely different from the Scheme of Chapter XV. While Chapter V deals with "Acceptance of Deposits by Companies", from Sections 73 to 76, Chapter XV deals with "Compromises, Arrangements and Amalgamations" from Sections 230 to 240.

39. Therefore, whenever a company proposes to make an arrangement with its creditors, especially when a petition for winding up is pending, the same could be done only before the Company Court (until the constitution of the Tribunal). The purpose of Section 74(2) is merely to grant time to the company to repay the deposit as well as the interest. But, in a Scheme of Arrangement under Section 230 of the Companies Act, 2013, it is possible even to reduce the amount payable, subject to certain conditions.

40. In this case, the company petitions in C.P.Nos.143 to 145 of 2015 for the winding up of the appellant company were filed on 10.3.2015 by the depositors/creditors. They were found to be in order and numbered on 26.3.2015. It was only thereafter that the appellant filed the petition under Section 74(2) before the Company Law Board on 27.3.2015. In other words, on the date on which the appellant presented an application before the Company Law Board under Section 74(2), three petitions for winding up had already been filed before this Court.

41. Therefore, the appellant agreed, when the company petitions came up for hearing, to file an application before the Company Court itself for accepting a schedule of payment. But, the appellant could not file such an application during the period from 01.4.2015 to 27.4.2015, since the Managing Director and two other Directors of the appellant were in judicial custody at that time.

42. But, during the first week of May 2015, the appellant filed a quash petition in CrI.O.P.No. 9982 of 2015 (and not 11760 of 2015 as wrongly mentioned in the writ petition) under section 482 of the Code of Criminal Procedure for quashing the FIR in Crime No.05 of 2015. But the same was also withdrawn by the appellant, obviously due to

heavy turbulence in court hall.

43. Though the appellant sought to withdraw the quash petition with liberty only to raise all contentions at the appropriate forum, they came up with a writ petition in W.P.No.14664 of 2015, for the very same prayer. It is out of the dismissal of the said writ petition that the present appeal arises.

44. Therefore, the analysis of the legal issues raised forcibly by the learned senior counsel for the appellant cannot be done without taking note of the above factual details and without remembering the cry and curses of more than 6500 depositors.

FIRST CONTENTION BEFORE US

45. As we have indicated earlier, the first contention of the learned senior counsel for the appellant is that the provisions of TNPID Act, 1997, are not intended to deal with the inability to repay, of the companies not engaged in the business of receiving deposits, but to penalise only those fraudulent financial establishments that are engaged in the business of receiving deposits. Therefore, it is his contention that the provisions of TNPID Act, 1997, cannot be invoked against all kinds of companies such as the appellant herein, which is engaged only in the business of providing software solutions and not in the business of receiving deposits.

46. To test the correctness of the above contention, it may be necessary to have a look at a few historical facts.

47. During the early 1990's, when non-banking finance companies and other financial establishments exploited gullible public with the lure of a high return on investment, lakhs of depositors invested their hard earned money, some of them their retirement benefits, in those companies, only to find at the end of the day that they had been cheated. Unable to tackle this menace with the existing legal system, the State of Tamil Nadu enacted the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997. The constitutional validity of the Act was upheld by this Court in the first round of litigation in Thiru Muruga Finance v. State of Tamil Nadu [2000 (2) CTC 609].

48. Finding that the TNPID Act was innovative in nature, the Reserve Bank of India addressed the State Governments to enact similar legislations. Immediately, the State of Maharashtra followed suit and enacted the Maharashtra Protection of Interest of Depositors

(in Financial Establishments) Act, 1999. The Union Government of Pondicherry also enacted a similar legislation.

49. The validity of the Pondicherry enactment was challenged, but the challenge was rejected by this Court in *Indian Bank v. Chief Judicial Magistrate* [2006 (4) LW 535].

50. However, a Full Bench of the Bombay High Court struck down the Maharashtra Act as unconstitutional on the ground that the same being a State enactment, was in conflict with the central legislations, such as Companies Act, 1956, Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949.

51. Inspired by the decision of the Full Bench of the Bombay High Court, a fresh challenge was made to the constitutional validity of the Tamil Nadu Act, by some of the financial establishments, who had sufficient financial resources at their command, thanks to lakhs of depositors. The fresh challenge to the Tamil Nadu Act was referred to a Full Bench of this Court. The Full Bench dismissed all the writ petitions by a judgment dated 02.3.2007 reported in *S.Bagavathy v. State* [2007 (2) CTC 207].

52. As can be seen from paragraph 5.3 of the decision of the Full Bench, the Tamil Nadu Act was assailed on the ground that it was in conflict with the provisions of the Reserve Bank of India Act, 1934, Banking Regulation Act, 1949, Companies Act, 1956 and Criminal Law Amendment Ordinance, 1944, as made applicable by the Criminal Law (Tamil Nadu Amendment) Act, 1997.

53. While dealing with the ground of challenge with reference to the provisions of the Companies Act, 1956, the Full Bench of this Court held in paragraph 78 to 81 of its decision in *S.Bagavathy* as follows:-

"78. The main plank of argument advanced on behalf of the petitioners is that the subject matter of the impugned enactment, viz., "to regulate the activities of the financial establishments" falls within the field of legislation under Entries 43 and 44 of the Union List, referred to above. It is further contended that the field is already occupied by Section 58A of the Companies Act, 1956 and Rule 3A of the Companies (Acceptance of Deposits) Rules and in this regard reliance is placed on the decision of the Apex Court in *Delhi Cloth and General Mills Co. Ltd. v. Union of India*, referred supra.

79. It is also emphasised, based on the decision of the Apex Court in Velayuidhan Achari, T. v. Union of India, referred supra, whereunder the view of the Delhi High Court in Kanta Mehta v. Union of India, referred supra, that the subject matter of legislation impugned therein falls within the meaning of "banking", coming under the provisions of the Section 45S and 58B(5A) and 58B(5B) read with Section 45I of the Reserve Bank of India Act, 1934, and but for the facility of withdrawing by cheque or draft, the definition of "banking" in the Banking Regulation Act, 1949 would squarely govern the impugned business activities of the financial establishments.

80. The existing laws, namely Section 58A of the Companies Act, 1956, regulates the acceptance of the deposits and Section 45S of Reserve Bank of India Act, 1934 prohibits the acceptance of the deposits, and also prescribes suitable punishment and penalties for contravening the same, but, neither of the existing laws provide for regulating the activities of the financial establishments, which not only duped the innocent depositors and accepted deposits from them, but also siphoned of, diverted or transferred the funds mala fide. The existing laws do not provide for attachment of the properties that were procured either in the name of the Financial Establishments or in the name of any other person from and out of the deposits collected by the Financial Establishments, or if it transpires 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 or a person who has borrowed money from the Financial Establishment to the extent of his default or, such other properties of that person in whose name properties were purchased from and out of the deposits collected by the Financial Establishment, nor provide for attachment of the properties of mala fide transferees, nor provide for sale of those properties attached and to distribute the sale proceeds equitably to the depositors. However, the impugned Act, under Sections 3 and 8 provides for attachment of properties of the financial

establishments and persons mentioned in Section 3 and also malafide transferees, sale as well as equitable distribution among the depositors, in the interest of the public at large. Therefore, it cannot be stated that the impugned Act attempts to supplant or supplement parliamentary legislation and seeks to cure the deficiencies in the parliamentary legislations, viz., Companies Act, 1956 or Reserve Bank of India Act, 1934. Therefore, the contention that the shortfall or the deficiency in the parliamentary legislation cannot be cured by the Tamil Nadu Act is not sustainable.

81. Similarly, since the object of the impugned enactment is not the same as that intended under Section 58A of the Companies Act, 1956 and under Section 45S of the Reserve Bank of India Act, 1934, the penalties envisaged under those Acts for any contravention cannot either be compared or contrasted with the penalties prescribed in the impugned enactment, because, in substance, the object of the impugned legislation is, by and large, different from that intended under Section 58A of the Companies Act, 1956 and Section 45S of the Reserve Bank of India Act, 1934. Section 58A of the Companies Act, 1956 is intended to regulate the acceptance of public deposits and Section 45S of the Reserve Bank of India Act, 1934 is intended to prohibit acceptance of the same. But, the Tamil Nadu Act is intended to regulate the activities of the financial establishments and to find a solution to the problem of the depositors, by due process of law, so that the dues payable to the depositors can be realised."

54. After holding that the field of operation of the provisions of the Companies Act, 1956, and the Companies (Acceptance of Deposits) Rules was quite different from the field of operation of the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 and also after holding that the object behind Section 58-A of the Companies Act, 1956 was completely different from the object of the Tamil Nadu Act, the Full Bench pointed out in paragraph 82 of its decision that at the most, the Tamil Nadu Act can be said to have trenched into the central Law to a small extent incidentally and that the same has to be understood in the light of the pith and substance of the legislation.

55. Again from paragraphs 103 onwards, the Full Bench dealt with the question of legislative competency with specific reference to Section 58-A of the Companies Act, 1956 and held as follows:-

The impugned Tamil Nadu act AND SECTION 58A OF THE Companies Act, 1956 WITH REFERENCE TO THE Delhi Cloth and General Mills Co. Ltd. v. Union of India CASE

100. The alternative argument advanced on behalf of the petitioners is based on the decision of Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred to supra where the validity of section 58A of the Companies Act, 1956 read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975 was upheld.

101. It is contended that if the Tamil Nadu Act is relating to the incorporation of the financial establishments, the same should fall under Entry 43 of the List I which deals with incorporation and therefore, the State legislature has no competency to enact the impugned Act. According to the petitioners, there is already an enactment viz., Companies Act, 1956 which occupies the field.

103.1. When a challenge is made as to section 58A of the Companies Act, 1956 as well as Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975 (hereinafter referred to 'Deposits Rules'), the Apex Court in Delhi Cloth and General Mills Co. Ltd. v. Union of India, referred supra held that section 58A of Companies Act, 1956 confers the power on the central Government to prescribe the limits upto which, the manner in which and the conditions subject to which deposits may be invited or accepted by non-banking companies and the same is intended to check the abuse by corporate sector and to protect the depositors, and rejected the contention that the State alone is competent to protect the socially and economically weaker sections of society against exploitation by receiving deposits from them, and ultimately upheld the legislative competency of the Parliament to enact Section 58A of the Companies Act, 1956.

..... The Apex Court thus held that section 58A and Rule 3A are regulatory measures and it may not be within the domain of the Court to test the wisdom and efficacy of the legislature and therefore, disagreed with the contention of the petitioners that the State

alone can enact a law to protect the socially and economically weaker sections of the society. Then why the impugned enactment ?

103.2. The straight answer to the question is that none of the petitioners is a company registered under the Companies Act, 1956 and hence the provisions of the Companies Act, 1956 are not applicable. On the other hand, the impugned legislation is enacted in the public interest to regulate the activities of financial establishments which falls under Entry 1 and 32 of the State List.

103.3. It is true when a challenge is made to Section 58A of the Companies Act and Rule 3(A) of the Companies (Acceptance of Deposits) Rules in *Delhi Cloth and General Mills Co. Ltd. v. Union of India*, referred supra, the Apex Court held that the power to regulate the acceptance of the deposits by the Companies is well within the field of legislation of the Union of India. But, under Entry 32, the State is also competent to make appropriate laws incorporating and regulating the corporations other than those specified in List I and to make necessary laws for the unincorporated trading, which we propose to deal in detail latter.

56. It is of interest to note that the writ petition filed by the appellant herein for quashing the First Information Report is on identical grounds on which the very validity of the TNPID Act, 1997, was questioned. In the batch of cases before the Full Bench in *S. Bagavathy*, the writ petitioners challenged the constitutional validity of TNPID Act, 1997, on the ground that it is in conflict with Section 58-A of the Companies Act, 1956. In the writ petition, out of which the present appeal arises, the First Information Report is challenged almost on the same ground, namely that companies which are not in the business of receiving deposits and which are governed by the provisions of Section 74 of the Companies Act, 2013, cannot be prosecuted under the TNPID Act, 1997. If a challenge is made to the registration of a complaint under a particular enactment, on a ground on which the very Act was challenged, the same should meet with the same fact as that of the challenge to the enactment.

57. As a matter of fact, the decision of the Full Bench of this Court was taken on appeal to the Supreme Court. But, by a decision rendered on 04.3.2011 in *K.K. Baskaran v. State* [(2011) 3 SCC 793],

the Supreme Court dismissed the appeal. In paragraph 8 of its decision, the Supreme Court took note of the fact that one of the grounds of challenge to the TNPID Act was with reference to certain provisions of the Companies Act, 1956. But, in paragraph 9 of its judgment, the Supreme Court held that all the grounds of challenge lacked merit. After noting in paragraph 11, the fact that as on July 2002, the financial establishments had collected a huge amount of Rs.1945 Crores from over 19 lakhs depositors, the Supreme Court pointed in paragraph 12 of its judgment in K.K.Baskaran that the TNPID Act was not focussed on the transaction of banking or acceptance of deposits, but is designed to protect the public from fraudulent financial establishments. In paragraph 15 of its decision, the Supreme Court also took note of the amendment made to the TNPID Act under Tamil Nadu Amendment Act 30 of 2003, whereby the definition of the expression "financial establishment" was widened to include even companies registered under the Companies Act, 1956 and non banking financial companies. In paragraph 21 of its decision in K.K.Baskaran, the Supreme Court categorically rejected the challenge made on the basis of Section 58-A of the Companies Act, 1956. Paragraph 21 of the decision in Supreme Court in K.K.Baskaran reads as follows:

"The Bombay High Court has taken the view that the Maharashtra Act transgressed into the field reserved for Parliament. We do not agree. It is true that Section 58A of the Companies Act has been upheld by this Court in Delhi Cloth Mills Ltd vs. Union of India (1983) 4 SCC 166 and the provisions of Chapter IIIC of the Reserve Bank of India Act, 1934 was upheld by this Court in T. Velayndhan Achari vs. Union of India (1993) 2 SCC 582. However, we are not in agreement with the Full Bench decision of the Bombay High Court that the subject matter covered by the said Act falls squarely within the subject matter of Section 58A and 58AA of the Companies Act."

58. Again, in paragraph 33, the Supreme Court held that while Section 58-A of the Companies Act prescribes the conditions under which deposits may be invited or accepted by the companies, the aim and object of the TNPID Act is totally different. The Court pointed out in paragraph 35 that the field occupied by the Companies Act was completely different from the field sought to be occupied by the TNPID Act. Therefore, it is clear that the appellant cannot now be heard to contend that in view of the nature of the business carried on by them, the provisions of the TNPID Act, 1997 are not attracted.

59. The same conclusion can be arrived at even by a different method. The definition of the expression "financial establishment" under Section 2(3) of the TNPID Act, 1997, after its amendment in 2003 reads as follows:

Section 2(3):

"financial establishment" means an individual, an association of individuals, a firm or a company registered under the Companies Act, 1956 (central Act 1 of 1956) carrying on the business of receiving deposits under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined in Section 5(c) of the Banking Regulation Act, 1949 (Central Act X of 1949)".

60. In simple terms, the definition of the expression "financial establishment" under TNPID Act, 1997, covers a company incorporated under the Companies Act, 1956 "carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner". The question as to whether a company is carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner, is a question of fact into which this Court exercising jurisdiction under Article 226 cannot go, especially when the relief sought is to quash a First Information Report. It is needless at this distance of time to cite any authority for the proposition that a First Information Report cannot be quashed by a Court under Article 226, on the basis of any evidence or material other than what is reflected in the First Information Report itself.

61. The question as to whether the appellant is carrying on the business of receiving deposits under any Scheme or Arrangement or in any other manner is a question of fact, which needs to be proved with evidence. It may not even be proper, merely to look into the Memorandum and Articles of Association of a company and come to a conclusion on the basis of the "objects clause" contained therein. Whether a company is carrying on the business as per the objects clause contained in the Memorandum and Articles of Association would itself be a question of fact to be decided on the basis of evidence.

62. To satisfy his conscience as to whether or not there was prima facie material to show that the appellant is carrying on the business of receiving deposits, the learned Judge has looked into the

website and found out that they were also rendering banking and financial services. What is vertical and what is horizontal in a website information, cannot become the subject matter of a controversy, to be adjudicated in a writ petition under Article 226 for quashing a FIR.

63. Either during the course of investigation or at the worse during the trial, the appellant can always establish that they never carried on the business of receiving deposits under any Scheme or Arrangement or in any other manner, so as to come within the purview of the definition of the expression "financial establishment" under Section 2(3) of the TNPID Act, 1997. The FIR cannot be quashed on the basis of an assertion in an affidavit filed before the Court that the appellant is not carrying on the business of receiving deposits. The Investigating Officer has found at least prima facie (i) that the appellant had engaged the services of 8 or 9 finance brokers, and (ii) that through them and even directly, the appellant had collected deposits from about 6540 depositors throughout the country, to the total tune of more than Rs.55 Crores.

64. Therefore, the learned Judge was right in refusing to adjudicate in a writ petition under Article 226 for quashing an FIR, the question as to whether the appellant is carrying on the business of receiving deposits or not. Hence, the first contention of the appellant has to be rejected. Accordingly, it is rejected.

SECOND CONTENTION BEFORE US

65. As we have pointed out earlier, the second contention of the appellant is that the police have no powers under the TNPID Act, to investigate an offence under the Act, without a sanction from the competent authority. In support of his contention, the appellant relies upon the fact that the same question of law is under consideration of the Supreme Court in S.L.P.(Crl.) No.53 of 2009, in an appeal arising out of a judgment of a learned Judge of this Court.

66. We have carefully considered the above submission.

67. There are two aspects. The first is as to whether we are entitled to take note of the law laid down by a learned Judge of this Court in P.S. Chellamuthu v. State, at least as of persuasive value. The second aspect is as to whether the grant of a stay by the Supreme Court in P.S.Chellamuthu v. State, would act as a bar for us even to consider this contention.

68. According to the appellant, we are not entitled to take note of the law laid down by the learned Judge of this Court in P.S.Chellamuthu, in view of the stay granted by the Supreme Court. We are afraid that it is a wrong understanding of the law on the part of the appellant. In P.S.Chellamuthu, the question that arose before a learned Judge of this Court was as to whether the police have power to investigate into a complaint under TNPID Act or not. The learned Judge of this Court answered the question in the affirmative. On an appeal to the Supreme Court, the Supreme Court granted leave and passed the following order:

"During the pendency of the appeal, operation and implementation of the impugned judgment and order shall as also further proceedings in C.C.No.31 of 2001 pending before the Special Court (TNPID Act) Chennai shall remain stayed".

69. The above order of the Supreme Court cannot be read as a blanket order of stay of all investigations by the police and all trials by the Special Courts in all cases throughout Tamil Nadu. If it is so construed, it would mean that after upholding the Constitutional validity of the Act, the Supreme Court had indirectly stayed the implementation of the provisions of the Act. Therefore, the stay granted by the Supreme Court cannot be taken to be a general amnesty to all financial establishments from being prosecuted by the police under the TNPID Act.

70. The learned Judge was right in holding, on the basis of the law laid down by the Supreme Court in Shree Chamundi Moped Limited v. Church of South India Trust Association [1992 (3) SCC 1], that the grant of a stay by the Supreme Court in a case would not tantamount to wiping out the law laid down by the High Court. The law cannot be allowed to be in a state of limbo or presumed to be what the parties argue, until the Supreme Court finally decides the issue. At the most, the grant of an order of stay by the Supreme Court could be taken to mean that the issue raised therein had not reached finality. What the appellant now wants us to do is to accept what according to him is the law, till the Supreme Court disposes of SLP (Cr1.) No.53 of 2009.

71. We are afraid we cannot do that. We cannot ask thousands of depositors to await the outcome of the case pending before the Supreme Court from the year 2009, as many of them are senior citizens, who want their hard earned money to be repaid to them,

before the last and final boarding call is made to them. Even if tell the depositors to wait till a decision is rendered by the Supreme court in the criminal appeal in P.S.Chellamuthu Vs. State, many of them may not be able to wait, as time waits for none.

72. As a matter of fact, the Company Court (of this Court) ordered notice in C.A.No.561 of 2015 in C.P.Nos. 143 to 145 of 2015 filed by the appellant for accepting a schedule of payment to the depositors. In response to the notice published by the appellant in newspapers, inviting objections to the proposed scheme of arrangement, hundreds of depositors have sent letters, partly written in ink and mostly in tears.

73. It is true, as rightly contended by Mr.P.S.Raman, learned senior counsel for the appellant that if the appellant moves the Supreme Court as against these orders, the grant of leave and stay would be automatic and imminent, in view of the fact that SLP (Crl.) No.53 of 2009 filed by P.S.Chellamuthu vs. State, is already pending on the file of the Supreme Court, on this very same issue. But the fact that there is lot of scope (as well as hope) for a party affected by our order to go to the Supreme Court and get a stay, cannot deter us from considering the second contention raised before us, at least independent of the decision in P.S.Chellamuthu. Therefore, we shall take up the second contention.

74. A look at the provisions of TNPID Act, 1997, would show that the scheme of the Act is divided into 5 Chapters. Chapter I contains two sections, one providing the short title and commencement and the second providing definitions. Chapter II contains two sections, one relating to attachment of properties and the other relating to appointment of competent authorities. Chapter III contains sections 5 and 5A, with the former dealing with default in repayment of deposits and the later dealing with compounding of offences. Chapter IV contains 8 Sections, dealing respectively with the constitution of Special Courts, the powers of the Special Court, attachment of property, security in lieu of attachment, administration of attached properties, appeal, appointment of Special Public Prosecutors and procedures and powers of the Special Court. Chapter V contains 2 sections, one declaring the overriding effect of this Act over other laws and the other conferring powers upon the Government to make Rules.

75. The purpose of appointment of the competent authority, as spelt out clearly in Section 4 (1) of the Act, is only to exercise control over the properties attached by the Government under Section 3. Sub-section (2) of Section 4 confers such other powers upon the competent authority, as may be necessary for carrying out the purposes of the Act. The purpose of the Act as seen from the preamble is "to protect the deposits made by the public in the financial establishments and matters relating thereto". Interestingly, the purpose is not to protect the depositors, but to protect the deposits made by the public. Even the statement of objects and reasons does not focus upon "investigation of offences, prosecution and trial". Therefore, to say that the competent authority appointed under Section 4(1) alone is entitled to investigate an offence punishable under Section 5, is completely a misconception.

76. There is no provision in TNPID Act, 1997, empowering the competent authority to investigate into an offence punishable under Section 5. The expression "competent authority" is defined in Section 2(1) to mean an authority appointed under Section 4. It appears that the Government initially appointed the Commissioner for Land Administration and later the Additional Commissioner for Land Administration as the competent authority under the Act. This competent authority is conferred only with three types of powers under the Act, namely (i) to exercise control under Section 4(1) over the properties attached by the Government, (ii) to exercise such other powers for carrying out the purposes of the Act, and (iii) to compound an offence punishable under Section 5 before the institution of the prosecution.

77. The competent authority is not vested either with the power of investigation or with the power to sanction an investigation into an offence punishable under Section 5.

78. The fact that Section 14 declares the provisions of this Act to have overriding effect upon all other laws, does not also advance the case of the appellant. The overriding effect under Section 14 will come into force, only if there is anything in any other law that is inconsistent with the provisions of the TNPID Act. No provision in the Code of Criminal Procedure, dealing with the power of investigation by the police, is inconsistent with any of the provisions of TNPID Act.

79. Section 4(1) of the Code of Criminal Procedure states that all offences under the IPC shall be investigated, inquired into, tried and otherwise dealt with, according to the provisions contained in the Code. Sub-section (2) of Section 4 makes even the offences under any other law, liable to be investigated, inquired into, tried and otherwise dealt with, according to the provisions of the Code, subject however to any enactment that regulates those things.

80. We do not know how any of the above provisions is inconsistent with the provisions of the TNPID Act. Since TNPID Act provides for the constitution of a Special Court, the provisions of the Code in so far as they relate to the inquiry and trial of the offences would stand excluded, to a limited extent, by virtue of Section 4(2) of the Code read with Section 14 of the TNPID Act.

81. But TNPID Act by itself does not lay down any procedure either for investigation or for trial of an offence punishable under Section 5. This is why Section 13(1) of the TNPID Act mandates the Special Court to follow the procedure prescribed in the Code, for the trial of warrant cases, while trying an accused under the TNPID Act. Sub-section (2) of Section 13 of the TNPID Act goes a step further by making the provisions of the Code applicable to proceedings before a Special Court. It also contains a deeming fiction making a Special Court to be a Court of the Magistrate.

82. Therefore, even if we ignore the reasonings given by a learned Judge of this Court in his decision dated 4.12.2008, rendered in P.S.Chellamuthu v. State (CrI.O.P.No.21711 of 2007) on the ground that the Supreme Court had granted a stay of implementation of the said Judgment, we cannot come to any other conclusion with regard to the power of the police to investigate into an offence punishable under Section 5 of the TNPID Act.

83. The second contention of the appellant in entirety, loses sight of one more important fact. The FIR registered in Cr.No.05 of 2015 against the appellant and its Directors, is not merely for an offence under Section 5 of the TNPID Act, but also for the offence under Section 420 IPC. We are completely at a loss to understand as to why the Economic Offences Wing cannot even investigate into the offence under Section 420 IPC, for alleviating the sufferings of thousands of depositors, some of whom are at the fag end of their lives. Therefore, the second contention is also devoid of merits.

84. In the result, we find that the order of the learned Judge refusing to interfere with an investigation into a Criminal Complaint, does not call for any interference. Any interference with the investigation even at the stage of FIR, would completely jeopardise the interests of more than 6500 depositors to whom a sum of about Rs. 55 crores is due. It would also jeopardise the interests of 5 different Banks, to whom, a staggering amount of about Rs. 189 crores is due from the appellant. Hence, the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gr/kpl

To

The Deputy Superintendent of Police,
DOW -II, Anna Nagar,
Chennai - 600 040.

4 CCs to M/s. Nithyaesh and Vaibhav, Advocate SR.No. 46119

W.A.No.1227 of 2015

ALA (CO)
PSI (28.08.2015)

सत्यमेव जयते

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