

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.1375 of 2014

and

M.P.No.1 of 2014

Pragadeeswari

Vs

Petitioner/A5

State rep. by,
Deputy Superintendent of Police,
Economic Offence Wing - II,
Anna Nagar, Chennai - 102

.. Respondent

Criminal Revision filed under sections 397 and 406 of Criminal Procedure Code to call for the records and set aside the order passed in Crl.M.P.No.1838 of 2014 in C.C.No.15 of 2013 pending on the file of the Special Court under T.N.P.I.D. In (F.ES) Act, 1997, Chennai dated 10.12.2014.

For Petitioner : Mr.K.M.Balaji

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

Revision petition is directed against the order in Crl.M.P.No.1838 of 2014 in C.C.No.15 of 2013 on the file of the learned Special Judge, Tamilnadu Protection of Interests of Depositors (TNPID) Court at Chennai, dismissing the petition filed under Section 239 Cr.P.C., for discharge.

2. Material on record discloses that Thiru Annamalaiyar Nagai Semippu Thittam, was a scheme started in the year 2007. It was unregistered. Pension scheme is also one of the schemes floated by the petitioner. Her husband Kumararaja (A4) and others viz., Veera Manikandan (A6) and Bhagwan Dhas were also parties to the scheme. Believing the representation and promises, deposits have been made in M.S.I.S Solutions, company of the accused/petitioner. Interest was initially paid. Thereafter, there was default in payment of interest

and principal amount, which resulted in a complaint in CCB Cr.No.200/2010 u/s.420 r/w 34 IPC registered and taken up for investigation. Thereafter, the case has been transferred to EOW and re-registered as EOW II Cr.No.5/2010 u/s.420 r/w 34 IPC on 09.06.2010. Material on record further discloses that the abovesaid company is not registered with the Registrar of Companies or Registrar of Firms (Chits).

3. On the proposal for ad-interim attachment of the movable landed properties and vehicles seized, Government have issued orders vide G.O.Ms. No.33, dated 11.01.2013. The competent authority / District Revenue officer, Chennai, has also filed an application before this Court for absolute attachment orders in O.A.No.2 of 2014 in S.R.No.294 of 2013.

4. When the matter stood thus, petitioner has sought for discharge under Section 239 Cr.P.C. After hearing the rival submissions, vide order in CrI.M.P.No.1838 of 2014 in C.C.No.15 of 2013 dated 10.12.2014, the learned Special Judge, Tamilnadu Protection of Interests of Depositors (TNPID) Court, dismissed the application.

5. Mr.K.M.Balaji, the learned counsel for the petitioner assailed the correctness of the abovesaid order and contended that the petitioner was a mere name lender for the companies and she had not managed the affairs of the financial firm and further contended that wife of Kumararaja (A4), who alongwith others, alone have managed the firm and also placed reliance on the decision of this Court in Prasannadevi Vs. State of Tamilnadu rep. by Deputy Superintendent of Police, (Economic Offence Wing), Cuddalore, Cuddalore District, reported in 2010 (1) MLJ (CrI.) 742.

6. Inviting the attention of this Court to another judgment in R.Suresh Vs. State, rep. by Deputy Superintendent of Police, Economic Offences Wing II, Chennai, reported in (2013) 3 MLJ (CrI.) 414, learned counsel further submitted that while accused A6 in C.C.No.15 of 2014, on the file of the Tamilnadu Protection of Interests of Depositors (TNPID) Court, has been discharged, the same yardstick ought to have been applied to the petitioner, who is in no way connected with the firm or its affairs.

7. Heard Mr.P.Govindarajan, learned Additional Public Prosecutor, who submitted that the impugned order is a well considered order and the active role played by the petitioner has been prima facie observed by the Tamilnadu Protection of Interests of Depositors (TNPID) Court. He also submitted that matter requires adjudication and prayed to dismiss the revision petition.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. Section 2(3) of Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamilnadu Act 44 of 1997), defines "Financial Establishment" and it means as follows:

"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 Banking Regulation Act, 1949 (Central Act X of 1949)."

10. In the case on hand, Government have already issued G.O.Ms.No.33 for ad-interim attachment of the movable landed properties and vehicles seized. As stated supra, steps are also been taken for absolute attachment of the property in O.A.No.2 of 2014 in S.R.No.294 of 2013 and it is stated to be pending.

11. After considering the rival submissions and material on record, the learned Special Judge, Tamilnadu Protection of Interests of Depositors (TNPID) Court has prima facie found that the petitioner is the owner of the firm Thiru Annamalaiyar Nagai Semippu Thittam. Pension schemes have been floated. Deposits have been made. Petitioner, is an individual and falling within the definition of "Financial Establishments" as per Section 2(3) of the Tamilnadu Protection of Interests of Depositors (TNPID) Act, 1997. She has also collected deposits and signed receipts and the same were produced before the Tamilnadu Protection of Interests of Depositors (TNPID) Court. The petitioner has signed the jewel receipts. Though reliance has been placed on the decision of this Court in Prasannadevi Vs. State of Tamilnadu rep. by Deputy Superintendent of Police, (Economic Offence Wing), Cuddalore, Cuddalore District, reported in 2010 (1) MLJ (Crl.) 742, after considering the same, the Court below has dismissed the petition stating that the judgment relied on by the learned counsel is inappropriate to the facts of this Case.

12. At this juncture, it is worthwhile to incorporate paragraphs 12 and 13 of the judgment in Prasanna Devi's case for better appreciation.

12. The fact remains that the petitioner was not a partner of the partnership firm charged in this case under section 5 of the TNPID Act. The only allegation levelled by the witnesses examined on the side of the prosecuting agency is that the petitioner canvassed for deposits for the financial institution. To invoke the penal provision under section 5 of the TNPID Act, one should shoulder the

responsibility of managing the affairs of the financial firm or company. I find that the provision under section 5 of the TNPID Act has been drafted very carefully. A person who merely manages the affairs of a firm or a company viz., Clerks, Accountants, Office Assistants, who are just paid servants would not be responsible for the management in the sense that they are not answerable to the claim made against the financial firm. In other words, a person, who simply manages the affairs of a firm, cannot be said to have taken the responsibility of answering the allegation of mismanagement of the affairs of the firm. The Clerks, Accountants and Office Assistants come under the said category. They have been given a role to manage the affairs of the partnership firm, but, they are not responsible for the mismanagement of the firm when the same is under challenge by a third party. All the persons who manage the affairs of the financial institution need not necessarily be responsible for the management of the affairs of the institution. What is required under section 5 of the TNPID Act is that the person charged should have been responsible for the management of the affairs of the institution. The persons who simply manages the affairs of the financial institution as paid servant fall out the ambit and scope of the aforesaid provision of law.

13. The canvassing agents, as such, cannot be held responsible for the management of the affairs of the firm. A canvassing agent may contribute his mite by mobilising funds for the financial firm on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, we can say that such a person shoulders the responsibility of the management of the affairs of the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall verify the veracity of such embellished version regarding the performance of a firm and the financial soundness thereof with the person who is responsible for the management of the firm and offer his deposit."

13. In the abovesaid reported case, this Court has decided as to whether Clerks, Accountants, Office Assistants, who are just paid servants would be responsible for the management and therefore the case decided on the above facts would be inapposite to the case on

hand. Prima facie, there is evidence to the effect that as per the definition of "Financial Establishment" in 2(3) of Tamilnadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (Tamilnadu Act 44 of 1997), the petitioner herself is a financial institution. Schemes have been floated by the unregistered firm. Company is not registered with the Registrar of Companies or Registrar of Firms (Chits). Deposits have been collected and that petitioner has also signed the receipts. Going through the material on record, this Court is of the view that there is a prima facie material.

14. Judgment in R.Suresh Vs. State, rep. by Deputy Superintendent of Police, Economic Offences Wing II, Chennai, reported in (2013) 3 MLJ (Crl.) 414, relied on by the learned counsel for the petitioner also cannot be made applicable to the facts of this case. Role of the petitioner as a financial institution within the meaning of 2(3) of the Act, is prima facie established.

15. For the reasons stated supra, this Court is not inclined to accept the contentions of the petitioner. There is no illegality in the impugned order. Hence, the Criminal Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Special Judge,
(for TNPID) Chennai-104

2. The Deputy Superintendent of Police,
Economic Offence Wing - II,
Anna Nagar, Chennai - 102.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.M.Balaji Advocate sr.1080

Cr1.R.C.No.1375 of 2014

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