

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : W.P.No.14229/2015 [21.07.2015]
W.P.No.14664/2015 [15.07.2015]

DELIVERED ON : 06.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P. Nos.14229 and 14664 of 2015
and M.P. No.1 of 2015

Viswapriya [India] Limited
(Formerly known as Viswapriya Financial
Services and Securities Ltd.)
Rep by its Director, Mr.R.Subramanian
75-C, III Cross Street, II Main Road
Gandhi Nagar, Adyar
Chennai 600 020. .. Petitioner in W.P.14229/2015

M/s Helios and Matheson Information
Technology Ltd.,
Rep by its Authorized Signatory Mr.D.Sathasivam
No.9, Adware Towers, South Boag Road,
T.Nagar, Chennai 600 017. .. Petitioner in W.P.14664/2015

Vs

1.Government of Tamil Nadu
rep by its Secretary
Home Department
St.George, Chennai 600 009.

2.The Deputy Superintendent of Police
EOW-I, Anna Nagar, Chennai.

3.Haripriya Ramachandran .. Respondents in W.P.14229/2015

[R3 impleaded as per order of this Court dated 21.07.2015 in
M.P.No.2/15 in W.P.No.14229/2015]

The State
rep by the Deputy Superintendent of Police
EOW-II, Anna Nagar
Chennai 600 040. .. Respondent in W.P.14664/2015

Writ Petition No.14229 of 2015 filed under Article 226 of the Constitution of India praying for a writ of declaration declaring the registration of the FIR No.5 of 2013 as without jurisdiction and therefore, void and non-est.

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 Cr.No.5 of 2015 registered on 01.04.2015 on the file of the respondent police as without jurisdiction and therefore, ultra vires and non est in law.

IN W.P.NO.14229 OF 2015:

For Petitioner	Mr.Prakash Goklaney
For R2	Mr.C.Emalias, Addl.Public Prosecutor Mr.Ramakrishnan Veeraraghavan Amicus Curiae
For R3	Mr.Sathish Parasaran

IN W.P.NO.14664 OF 2015:

For Petitioner	Mr.Nithyaesh Natraj for M/s Nithyaesh and Vaibhav
For Respondent	Mr.AL.Somaiyaji, Advocate General & Mr.S.Shanmugavelayutham Public Prosecutor Assisted by Mr.P.Sanjay Gandhi, AGP Mr.Ramakrishnan Veeraraghavan and Mr.R.Sankaranarayanan Amicus Curiae

C O M M O N O R D E R

For the sake of convenience, it may be necessary to briefly state the facts obtaining in each of the cases individually.

2. W.P.No.14664 of 2015 has been filed by M/s Helios and Matheson Information Technology Ltd. [hereinafter would be referred to as Helios] for quashing the FIR in Cr.No.5 of 2015 that was registered on 01.04.2015 against the petitioner for an offence under Section 420 IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 [hereinafter would be referred to as TNPID Act].

3. W.P.No.14229 of 2015 has been filed by Viswapriya (India) Limited, formerly known as Viswapriya Financial Services and Securities Ltd., [hereinafter would be referred to as Viswapriya] for quashing the FIR in Cr.No.5 of 2013 that was registered on

21.10.2013 by the Deputy Superintendent of Police, Economic Offences Wing, for offences under Sections 120B, 406, 420 IPC and Section 5 of the TNPID Act.

4. It is indeed a sheer coincidence that, though Helios and Viswapriya have no relationship with each other, yet, they share a common Cr.No.5, but of course registered in different years. It is the specific case of the prosecution that, Helios and Viswapriya had collected deposits from public and on maturity, they failed to repay them, pursuant to which, on the complaint lodged by depositors, the aforesaid cases were registered against them for the offence under the TNPID Act along with IPC offences. At the outset, it is contended on behalf of Helios and Viswapriya that, the Deputy Superintendent of Police, Economic Offences Wing has no authority to conduct investigation under the TNPID Act and therefore, the very FIR deserves to be quashed. In support of this plea, the learned counsel for the accused submitted that, the power of Economic Offences Wing to conduct investigation for an offence under TNPID Act came for consideration before a learned single Judge of this Court in P.S.Chellamuthu v. The State [MANU/TN/1492/2008] CrI.O.P.Nos.21711 and 35339 of 2007 and this Court by order dated 04.12.2008, upheld the power of the Deputy Superintendent of Police, Economic Offences Wing to conduct investigation by referring to Sections 4 and 5 of the Code of Criminal Procedure. This order was taken to the Hon'ble Supreme Court in Special Leave to Appeal (CrI) No.53 of 2009 and the Hon'ble Supreme Court granted leave and passed the following order on 08.01.2010:

"Heard learned counsel for the parties.
Leave granted.

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

5. Therefore, it is the contention of the learned counsel that, since the Hon'ble Supreme Court has stayed the order dated 04.12.2008 passed by this Court in P.S.Chellamuthu's case, this Court should await the outcome of the decision of the Supreme Court. In support of this contention, the learned counsel relied upon the following judgments:

Sl.No	Cause Title	Citation
1	Mahadeolal Kanoda v. The Administrator General of West Bengal	AIR 1960 SC 936
2	Jaisri Sahu v. Rajdewan Dubey and others	AIR 1962 SC 83
3	Shri Bhagwan and another v. Ram Chand and another	AIR 1965 SC 1767
4	Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel	AIR 1968 SC 372
5	D.K.Trivedi and sons & others v. State of Gujarat & others	AIR 1986 SC 1323
6	Central Coalfields v. H.M.P.	1994 SCC SUPL(1) 323
7	S.I.Rooplal and another v. LT.Governor through Chief Secretary Delhi and others	1999 SCR SUPL(5) 310
8	Ramanjini and others vs. State of Andhra Pradesh and others	
9	Official Liquidator v. Dayanand and others	2008 (10) SCC 1
10	Saravana Thanga Nagai S.Thittam & others v. State Tr.Inspector of Police & another	

6. In most of the judgments referred to above, the principle that has been laid down by the Supreme Court is that, where a single Judge is inclined to take a view different from the one that has been taken by a single Judge of the same Court or of the Division Bench of the same Court, then he should not embark upon an enquiry as a single Judge, but should refer the matter to a Division Bench or should seek for constitution of a larger Bench to examine the question.

[a] In D.K.Trivedi and sons & others v. State of Gujarat [cited supra], the Hon'ble Supreme Court has held as follows:

"In our opinion, the course adopted by the High Court was not correct. If the High Court thought that the point raised by the Appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petition until this Court disposed of the other matters."

[b] In Central Coal fields vs. H.M.P. [cited supra], the Supreme Court has held as follows:

"2. It is open to the petitioners to apply in the High Courts in the writ petitions pending there, for an interim order in similar terms as has been

made by Hon'ble Mr. Justice J.S. Verma and Hon'ble Mr. Justice G.N. Ray in W.P.(C) NO.787 of 1992 on April 30, 1993. Apart from making the necessary interim orders or modification of the earlier interim order for this purpose, in these writ petitions pending in the High Court, it would be appropriate that further hearing of the writ petitions in the High Courts remains stayed until the decision of Writ Petition No.787 of 1992 and the connected writ petitions by this Court.

3. With these observations these transfer petitions are disposed of, for the aforesaid reasons. Court Masters."

7. Now, this Court has to analyse the effect of the Hon'ble Supreme Court's order in Chellamuthu's case extracted above. The Hon'ble Supreme Court has not granted a general stay of the declaration of law made by the learned single Judge of this Court in Chellamuthu's case. The Hon'ble Supreme Court has only stated that, the implementation of the impugned judgment and order as also further proceedings in C.C.No.31 of 2001 shall be stayed. This clearly means that, the said stay is applicable only for the parties in that case and definitely not for others. In Shree Chamundi Moped Ltd. v. Church of South India Trust Association, Madras [(1992) 3 SCC 1], a three Judge Bench of the Hon'ble Supreme Court have discussed the effect of an interim order and what they have stated has been referred to in the judgment of the Calcutta High Court in Pijush Kanti Chowdhury v. State of West Bengal HC and others [2007 (3) CHN 178].

"12. At this juncture, it will not be inappropriate to refer to the following observations of the Supreme Court in the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras while pointing out the difference between an order of stay of operation of the order impugned and an order quashing the order itself:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed

by the appellate authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that that appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the appellate authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the appellate authority.

8. The learned counsel for the accused submitted that, the Calcutta High Court's view has been discussed and differed by a learned single Judge of the Delhi High Court in *Alka Gupta v. Medical Council of India* [order dated 05.05.2014 in W.P.(C) 889 of 2013 in CMP Appeal No.1689 of 2013] and submitted a copy of the said order. It is true that a learned single Judge of the Delhi High Court has referred to *Shree Chamundi Moped's* case and *Pijush Kanti Chowdhury's* case and has differed from the said views. This Court would prefer to follow the law laid down by the Supreme Court in *Shree Chamundi Moped's* case and by the Calcutta High Court in *Pijush Kanti Chowdhury's* case, than the view taken by the Delhi High Court. To reiterate, in *Chellamuthu's* case, the Hon'ble Supreme Court has not stayed the declaration of law, but has only stayed the operation and implementation of the judgment to prosecute the offenders in that case and not as a general proposition of stay of prosecutions in the State of Tamil Nadu launched by the Economic Offences Wing under the TNPID Act. The order of stay operates as between the parties to the lis and it does not constitute a declaration of law under Article 141 of Constitution of India. Hence, this preliminary plea raised by the learned counsel for the accused is rejected.

9. The next two grounds of attack relate to:

(a) power of the Deputy Superintendent of Police, Economic Offences Wing to investigate cases relating to incorporated Companies and Non-Banking Financial Companies; and

(b) very power of Police to investigate an offence under TNPID

Act on the ground that, only the Competent Authority can investigate and the role of the Police is only to assist the said authority.

10. The learned counsel for the accused submitted that, G.O.Ms.No.1697, Home (Courts IIA) Department dated 24.12.1999 under which Economic Offences Wing of the Police Department was constituted speaks of creation of an Economic Offences Wing to deal with cases relating to Non-Banking Financial Companies and unincorporated Financial Institutions and hence, the Deputy Superintendent of Police, Economic Offences Wing - II does not have the power to conduct the investigation in these cases as the accused are incorporated Companies. The circumstances

under which the Economic Offences Wing was constituted is narrated in G.O.Ms.No.1697 itself, which is as follows:

"ORDER

The High Court of Madras, Chennai, in its order dated 29.9.99, in Company Application Nos.479 and 480 of 1999, filed by M/s Anubhav Plantations Ltd., Chennai, has ordered that a Special Wing comprising of persons, possessing skill and capable of acting with a sense of urgency, headed by an officer not below the rank of a Police Commissioner must be constituted without further delay to deal with the cases against non-banking financial companies and unincorporated financial institutions which have collected money from public as deposits and thereafter defaulted in repayment to them after maturity. It was also ordered that able and experienced senior officers with integrity, recently retired from Banks and financial institutions and also able senior professionals with integrity can be associated with such a specialised Wing as advisors or consultants. The High Court, has further ordered to employ competent persons, audit, valuation, stock exchanges, securities market, etc., for legal assistance in dealing with such cases.

2. The Government after careful examination of the matter in consultation with the Director General of Police, Chennai and the Additional Director General of Police (Economic Offences Wing), Chennai, have decided to create an Economic Offences Wing-II (Financial Institutions) to deal with the cases relating to non-banking financial companies and unincorporated Financial Institutions. Accordingly, the Government direct that the Economic Offences Wing-II (Financial Institutions) be created with immediate effect headed by an Inspector General of Police at State

level exclusively to deal with the cases relating to non-banking financial companies and unincorporated financial institutions. The said Economic Offences Wing-II will function under the overall control of Additional Director General of Police (Economic Offences) with the following staff:"

11. On the orders passed by this Court in the Anubhav Plantations case, the State Government, perhaps, in exercise of the powers under Section 9 of the Tamil Nadu District Police Act, 1859 has constituted a separate wing in the State Police Force for dealing with Economic Offences.

12 . At this juncture, it may be relevant to trace the evolution of TNPID Act. In Tamil Nadu, in the 1990's, concerns dealing in finance business not covered by the Reserve Bank of India Act, 1934 sprouted in abundance and lured people from the lower strata of the Society to make deposits with them promising attractive interest and after collecting huge amounts, the depositors were left in the lurch. To curb this menace, TNPID Act (Tamil Nadu Act 44 of 97) was introduced and at the time when it was introduced, it did not cover Non-Banking Financial Companies and Companies registered under the Companies Act, 1956. It covered only Proprietorship and Partnership concerns. This loophole in the Act was taken advantage of by clever business and finance operators who floated incorporated companies to escape prosecution under the TNPID Act.

13. To answer the two contentions set out in para 9(a) and 9 (b) above, it may be necessary to briefly trace the history of Police Legislations in the Madras Presidency. During the days of the East India Company, by Regulations 1802 and 1808, Police Darogahs and Tanahdars were established in Districts and in local places. These institutions were abolished by Regulation XI of 1816 which was passed by the Governor in Council of Fort St.George on 13.09.1816. A few provisions of the Regulation would make interesting reading:

"It being expedient that a system of Police founded chiefly upon the ancient usages of the country, should be established throughout the territories subject to the Government of Fort St.George, and that the powers and authorities of the several classes of persons to be entrusted with the performance of police duties should be defined; The Right Honorable the Governor in Council has been pleased to enact the following rules.

II. Regulation XXXV, 1802, and Section XII, Regulation IV, 1808 are hereby rescinded.

III. The present establishments of Police Darogahs and Tanahdars shall from the first day of

November 1816, be abolished, and the duties heretofore discharged by those persons shall be performed by persons of the descriptions herein-after mentioned.

1. Heads of villages as described in Section III, Regulation IV, 1816 aided by Curnums or Village Registers, and Tallyars and other Village Watchers.

2. Tahsildars, or Native Collectors of districts, by whatever name designated, with the assistance of Peshkars, Gomashtas, and establishments of Peons.

3. Zemindars.

4. Ameens of Police.

5. Cutwals and their Peons

6. Magistrates of Zillas and their Assistants.

IV. Heads of villages shall be ex-officio Heads of the Police of their respective villages."

14. After the Sepoy Mutiny, 1857, the Crown took over the administration of India on November 1, 1858. The Torture Commission was appointed to look into the functioning of the police system. The report was so damning that the Legislative Council of India passed Act XXIV of 1859 on 06.09.1859, the title of which is "An act for the better regulation of the police within the territories subject to the Presidency of Fort St. George." The Preamble to the Act stated:

"Whereas it is expedient to make the Police-force throughout the Madras Presidency a more efficient instrument at the disposal of the Magistrate for the prevention and detection of crime, and to re-organise the Police-force and improve the condition of the village-police."

At this juncture it may be relevant to quote the definition of the word "person" in the said Act. The word "person" shall include a company or corporation." Thus it is abundantly clear that way back in 1859 itself the Law makers were aware of the need to bring to justice both natural and juristic persons and that is why the word "person" has been so defined and included in the Police Act itself. This should be borne in mind while considering the aforesaid two contentions of the learned counsel for the accused. Sections IX and XXI of 1859 Act are as follows:

"IX The Inspector-General may from time to time, subject to the approval of the Governor in Council, frame such orders and regulations as he shall deem expedient, relative to the general government and distribution of the Force, the

places of residence, the classification, rank and particular service of the Members thereof; their inspection; the description of arms, accoutrements and other necessities to be furnished to them; to the collecting and communicating intelligence and information; and all such other orders and regulations relative to the said Police Force as the said Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect, and for rendering such Force efficient in the discharge of all its duties.

XXI Every Police Officer shall, for all purposes in this Act contained, be considered to be always on duty and shall have the powers of a Police Officer in every part of General Police District. It shall be his duty to use his best endeavours and ability to prevent all crimes, offences, and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued to him."

15. Discussion about these provisions will be taken up while dealing with similar provisions of the 1861 Act, about which we will come to, a little later. The 1859 Act was a self contained Code, and it conferred the following powers on the Police:

Sections XXII - Police Officer may arrest without warrant; XXIII - Persons arrested without warrant to be taken to Station House until brought before Magistrate or bailed; XXIV - Releasing on bail; XXV - Superior Officer of Police may take recognizance for appearance of prosecutor or witness; XXVI - Condition of recognizance; XXVII - Remands; XXVIII - Entering drinking shops, gaming houses etc. without a warrant; XXIX - Inspection of weights and measures; XXX - Police Officer not to receive complaints of petty offences; XXXI - Police Officers may lay information before Magistrate; XXXII - All warrants and summons to be executed by the members of the Police Force; XXXIII - Warrant to be endorsed; XXXIV - Service of summons; XXXV - Warrant without summons; XXXVI - Notification of substance of warrant; XXXVII - Warrant how to be executed; XXXVIII - No unnecessary restraint; XXXIX - Breaking of outer door or window; XL - Breaking open a Zenanah or female apartment; XLI - Party arrested to be brought immediately to the authority mentioned in the warrant.

16. From the above it is evident that every conceivable power that is required for bringing offenders to justice was conferred upon the Police by the 1859 Act.

17. As the power of the Crown expanded after the assumption of suzerainty, the Governor General of India in Council felt that, an Act for the regulation of police for the administration of the whole country was essential and so, Central Act V of 1861 titled "An Act for the Regulation of Police" was brought into force on 22.03.1861. Initially this Act did not cover the Madras presidency because, Act XIV of 1859 was already in place. The 1861 Act also gave the same definition for the word "person". The police force constituted under the 1861 Act was subject to the general control of the Governor General of India-in-Council, whereas, the police force under the 1859 Act was under the control of Governor in Council. Section XXIII of the 1861 Act is almost parimateria with Section XXI of 1859 Act, and it read :

"XXIII It shall be the duty of every Police-Officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice; and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists: and it shall be lawful for every Police Officer, for any of the purposes mentioned in this Section, without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters."

Section 46 of 1861 Act was substituted by the Police Act (1861) Amendment Act 1895 (Act VIII of 1895) and the substituted provision is as follows:

"46(1) This Act shall not by its own operation take effect in any presidency, province or place. But the Governor General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any presidency, province or place, and the whole or such portion of this Act as shall be specified in such order shall thereupon take effect in such presidency, province or place."

By Notification No.728 dated 31.10.1895 (Gazette of India, 1895, Part I p.876), Section 15, 15A, 16, 30, 30A, 31 and 32 of the Indian Police Act, 1861 was extended to the whole of Madras Presidency. Notification No.728 reads as follows:

"The 31st October, 1895.

No.728.-- In exercise of the power conferred

by section 46, sub-section (1), of Act V of 1861 (an Act for the Regulation of Police), as amended by subsequent enactments, the Governor General in Council is pleased to extend sections 15, 15A, 16, 30, 30A, 31, and 32 of the said Act as amended to the whole of the Madras Presidency."

That is how Superintendents of Police in the Districts frequently pass orders under Section 30 of the Police Act, 1861 regulating assemblies and processions. Section 15A of the Indian Police Act, 1861 was amended by the Police (Madras Amendment) Act, 1948 (Madras Act No.XIII of 1948) and Sections 30, 31 and 34 of the Indian Police Act, 1861 were amended by the Police (Madras Amendment) Act 1955 (Madras Act XXII of 1955).

18. Till 1861, there was no codified penal law in India, but only regulations prescribing offences were in vogue. Police derived power to bring offenders to justice from Section 21 of Act XXIV of 1859 and Section 23 of Act V of 1861. The power to arrest was traceable to Sections 22 to 24 of Act XXIV of 1859. While so, the Indian Penal Code drafted by Lord Macaulay and the other Commissioners was accepted by the Governor General of India in Council in 1860 itself, but it was not brought into force because they were working on a procedural law without which the substantive law cannot be enforced. The Governor General of India in Council cleared the Code of Criminal Procedure, 1861 (Act XXV of 1861) and both Indian Penal Code, 1860 and Code of Criminal Procedure, 1861 were brought into force on the same day, namely 1st January, 1862. Section 21 of the Code of Criminal Procedure, 1861 is as follows:

"21. The Criminal Courts of the several grades, according to the powers vested in them respectively by this Act, shall have jurisdiction in respect of offences punishable under the Indian Penal Code (Act XLV of 1860) or under any special or local law (except offences which are by any such law made punishable by some other authority therein specifically mentioned), and in the investigation and trial of the offences hereby declared to be within their jurisdiction, shall be guided by the provisions of this Act."

19. The definition of the word "offence" has been given in Section 40 of the Indian Penal Code and it generally denotes a thing punishable by the Code. On a combined reading of Section 21 of Central Act XXIV of 1859 and Section 23 of Central V of 1861, it is beyond cavil that the source of power of the police to bring offenders to justice flows from Sections 21 and 23 of the Police Act referred to above and is guided by Section 21 of the Code of Criminal Procedure, 1861. The Governor General of India-in-Council passed an Act to repeal certain Regulations and Acts relating to Criminal Law and Procedure [Act XVII of 1862], which received the assent of the Governor General of India on 01.05.1862.

The Preamble is worth extracting:

"WHEREAS by Act XLV of 1860 a Penal Code has been prescribed for British India, and the said Code came into operation on the 1st day of January 1862; and whereas by Act XXV of 1861 a Code of Procedure is provided for the Courts of Criminal Judicature not established by Royal Charter, and the said Code likewise came into operation on the 1st day of January 1862 in the Presidencies of Bengal, Madras, and Bombay, and was at the same time, or has since been, or hereafter may be extended to other parts of British India; and whereas it is expedient to repeal, in the manner hereinafter provided, certain Regulations and Acts relating to Criminal Law and Procedure; It is enacted as follows:

I. The several Regulations and Acts set forth in the Schedule hereunto annexed, so far as they provide for the punishment of offences, shall be held to have been and are hereby repealed from the 1st day of January 1862 in the Presidencies of Bengal, Madras, and Bombay, and in the other parts of British India, in which such Regulations and Acts or any of them were in force on the said 1st day of January 1862, except in so far as they repeal the whole or any part of any other Regulation or Act, and except as to any offence committed before the said 1st day of January, 1862.

II.

III.

IV. In the investigation and trial of offences committed before the said 1st day of January 1862, the Criminal Courts of the several grades and the Officers of Police shall, after the passing of this Act, be guided by the provisions of the Code of Criminal Procedure, so far as the same can be applied, wherever the said Code shall be in operation at the time of such investigation or trial; and for the trial and punishment of such offences such Courts shall exercise the jurisdiction and powers vested in them under the said Code of Criminal Procedure, provided that no person convicted of any such offence shall be liable to any other punishment than that to which he would have been liable had he been convicted of such offence before the said 1st day of January 1862, and that no such person, who shall claim the same, shall be deprived of any right of appeal or reference to a Sudder Court which he would have enjoyed had the trial been held under any of the Regulations or Acts hereby repealed.

V. In any part of British India to which the Code of Criminal Procedure shall be extended after the passing of this Act, the said Code shall, subject to

the provisions of the last preceding Section, be followed in the investigation and trial of any offences committed before the date of such extension."

20. This Repealing Act repealed several unwanted provisions in various Regulations and Acts, out of which Sections 22 to 43 of the Act XXIV of 1859 relating to the power of the police to arrest, remand, etc. were repealed because, the Criminal Procedure Code, 1861 regulated those aspects. Nevertheless, the power of the police to bring offenders to justice conferred by Section 21 of Act XXIV of 1859 was retained and it continues even today. Similarly, Section 23 of Act V of 1861 [now called Indian Police Act, 1861] is intact. Act XXIV of 1859 was renamed as the Madras District Police Act, 1859 in the year 1901 and now, it is re-christened as Tamil Nadu District Police Act, 1859 with effect from 14 January 1969, after Madras State was renamed as Tamil Nadu. Roman numerals employed in Victorian legislations were replaced with Arabic ones.

21. In fine, as far as Tamil Nadu is concerned, the entire Police administration and powers flow from Tamil Nadu District Police Act, 1859 and on account of the Notification No.728 dated 31.10.1895, Section 15, 15A, 16, 30, 30A, 31 and 32 of the Indian Police Act, 1861 has been extended to Tamil Nadu.

22. The discussion will be incomplete without a reference to the Madras City Police Act, 1888 [Act II of 1888]. This Act created a position called "Commissioner of Police" for the city of Madras and vested the control of the Police force in Madras city on the Commissioner of Police. Section 16 of the Madras City Police Act, provides for employment of Police Officers appointed under the Tamil Nadu District Police Act, 1859 in the city of Madras. All Police men working under the Commissioner of Police are required to perform the duties adumbrated in Section 21 of the 1859 Act in addition to the duties under the Madras City Police Act, 1888. The Madras City Police Act, 1888 was re-christened as the Chennai City Police Act, 1888. As and when the Government creates new cities in Tamil Nadu, an Act is passed by the State Assembly to create the position of Commissioner of Police for the newly formed City and the provisions of the Chennai City Police Act, 1888 is made applicable. For example, by the Chennai City Police (Extension to the City of Madurai and to the City of Coimbatore) Act 1987 (Tamil Nadu Act 32 of 1987) the provisions of Madras City Police Act 1888 was extended to Madurai and Coimbatore. Similar Acts were passed to extend the 1888 Act to Salem, Trichy and Tirunelveli in 1997. The Government of India Act, 1935 which can be called as the precursor of the Constitution of India, created List I - Federal List and List II - Provincial Legislative List in Schedule VII. Police, including Railway and Village Police was included as item No.3 in List II. In the Constitution of India, Police is placed in item No.2 of List II - State List in Schedule VII.

23. The Code of Criminal Procedure, 1861 was replaced by the Code of Criminal Procedure, 1872 followed by the Code of Criminal Procedure, 1973, 1898 and now, we have the Code of Criminal

Procedure, 1973. Section 149 of the Code of Criminal Procedure, 1973 reads as under:

"Police to prevent cognizable offences.--
Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence."

24. As stated earlier, the Code of Criminal Procedure only regulates the investigation of an offence, but the source of power to investigate flows from the Police Acts under which the police force is constituted. Bearing this in mind, if Sections 4, 5, 154 and 157 of the 1973 Code of Criminal Procedure are analysed, it will be clear that, when once an information relating to a cognizable offence is given orally to an Officer in-charge of a Police Station, it is his duty to register an FIR and proceed with the investigation under Section 157 Cr.P.C., after sending a report to the Magistrate empowered to take cognizance of the offence. These are procedural steps to bring offenders to justice which is both a power and duty under Section 21 of the 1859 Act and 23 of the 1861 Act. G.O.Ms.No.1697, Home (Courts II A) Department dated 24.12.1999 is not the source of power for the police to investigate and it only creates a wing in the already existing force for effective investigation of white-collared offences.

25. The learned counsel for the accused placed strong reliance upon the Division Bench judgment of this Court in Tamaraiselvan v. Government of Tamil Nadu [judgment dated 10.02.2015 delivered by the First Bench of this Court], wherein, the Government Orders constituting Land Grabbing Cell and Special Court for Land Grabbing Cells were quashed by the Court, and contended that, the Government Order constituting Economic Offences Wing should also meet the same fate. The Hon'ble First Bench of this Court quashed those two Government Orders as they were found to be violative of Article 14 of the Constitution of India, inasmuch as the Hon'ble Bench felt that, without a law prescribing what Land Grabbing Office is, creation of a special wing for land grabbing offences, would amount to arbitrary exercise of power. In this case, TNPID Act clearly defines "the offence" and for investigating the offence, if a Special Police Wing is created, it cannot be violative of Article 14 of the Constitution of India. Therefore, the judgment of the Hon'ble First Bench was rendered in the facts and circumstances of that case and for the aforesaid reason, the principles in that judgment in my humble opinion, cannot be applied into this case.

26. The argument that Economic Offences Wing can investigate only partnership firms and unincorporated companies is an argument in vain. The definition of the word 'person' in the 1859 Police Act, Indian Penal Code, 1860 and the General Clauses Act, 1897, is an answer to this argument. If any person, be it natural or juristic, commits an offence, he/it can be brought to justice by the Police.

27. The next ground of attack was that the police have no power to investigate an offence under the TNPID Act and it is only the Competent Authority constituted under Section 4 of the TNPID Act which would have the power to conduct investigation. In support of this argument, learned counsel relied upon Rule 6(3) of the Tamil Nadu Protection of Interest of Depositors in Financial Establishment Rules, 1997 which is as follows:

"6(3) Any Officer in charge of police station when required by the Competent Authority, shall take all steps, including inquiry, investigation or survey in respect of any person, place, property, documents, books of account, etc., for the purpose of tracing and identifying the properties."

28. Steps taken under Criminal law for bringing the offender to book is an action in personam and steps taken to appropriate the properties of an offender is an action in rem. Section 5 of the TNPID Act describes the "offence" and the "punishment". Section 3 of TNPID Act provides for a procedure, similar to the one provided under Criminal Law Amendment Ordinance, 1944 for attaching the properties of a financial institution that had defaulted in repaying the depositors. A Competent Authority is appointed by the Government for safeguarding the financial interests of the depositors. If the argument of the learned counsel for the accused is accepted, in a given case, if a financial establishment does not have any assets for the Government to proceed under Sections 3 and 4, the result will be that, the offender will have to be left scot-free. This will defeat the very purpose of the TNPID Act. Section 6(3) of the Rule merely casts a duty on the Police to assist the Competent Authority for the purpose of identifying the properties stashed by the offender. To say that, only the Competent Authority will have power to conduct investigation and prosecute the offender, would mean conferring police powers on a Revenue Official for which there is no provision either in the Act or in the Code. Section 5 of TNPID Act creates an offence made punishable upto 10 years. TNPID Act will fall within Classification II of the First Schedule of the Code of Criminal Procedure, 1973 and the offence under Section 5 will be cognizable and non-bailable, thereby empowering the Police by virtue of Sections 4 and 5 the Code of Criminal Procedure, 1973 to take up the investigation and register FIR under Section 154 of the Code. Hence, this contention is rejected.

29. The next contention by the learned counsel is that, the accused are companies incorporated under the Companies Act, 1956 and therefore, only the provisions of Section 74 of the Companies Act, 2013 can be made applicable to them and not the provisions of the TNPID Act.

30. There is no force in this argument in the light of Section 14 of TNPID Act, which states as follows:

"14. Act to override other laws.-- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law."

31. Mr.Nithyaesh, learned counsel placed heavy reliance upon the non obstante clause used in Section 74(1)(a) of the Companies Act to drive home the point that, if a Company defaults in repaying the depositors, only the provisions of Section 74 can be invoked and not the TNPID Act. Section 74(1)(a) permits a Company to prepare a Scheme for repayment and the non obstante clause used therein would mean that, if any other law prescribes such a Scheme of repayment, then the provisions of Section 74 will supersede that law. Section 5 of the TNPID Act does not envisage preparation of any Scheme of repayment. It simply states that, if the financial establishment defaults in repaying a depositor, the offence is made out without anything more. No mens rea is even required. May be it is draconian, but nevertheless, its constitutional validity has been upheld by a Full Bench of this Court and the Supreme Court and it is too late in the day to challenge the vires of the Act. The Supreme Court, in K.K.Baskaran vs. State of Tamil Nadu [(2011) 3 SCC 793], New Horizon Sugar Mills Limited v. Government of Pondicherry [(2012) 10 SCC 575] and Soma Suresh Kumar vs. Government of Andhra Pradesh [(2013) 10 SCC 677] have dealt with all these issues which cannot be re-opened now. The Companies Act is a Central Legislation and it applies throughout India. There are several States where no Act similar to TNPID is available. Though Companies Act also provides for a mechanism for repayment of deposits, provisions of the TNPID Act are in addition to the mechanism provided by the Companies Act, because TNPID Act was introduced from the stand point of protecting the interest of depositors and to instil fear in the mind of fly-by-night financial establishments. Therefore, the provisions of the Companies Act and the provisions of the TNPID Act operate in two different fields.

32. The next question that has to be decided is the interpretation of the word "Financial Establishment" as defined by Section 2(3) of the TNPID Act which reads as follows:

"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).

33. The contention of Helios is that, they are not into the

business of finance, and that they are into the Information Technology Sector.

34. The learned Advocate General and Mr.Sankar Narayanan, learned Amicus Curiae took a stand that TNPID Act would apply to any Company that refuses to pay back its depositor. This argument was strongly refuted by Mr.Ramakrishnan, learned Amicus Curiae and the learned counsel for the accused. The learned Advocate General and Mr.Sankar Narayanan brought to the notice of this Court the changes that were effected to the TNPID Act by the 2003 amendments. They contended that, when the Act was originally passed in 1997, it clearly excluded a Company registered under the Companies Act, 1956 and also a Non-Banking Financial Company as defined in Section (f) of Section 45-I of Reserve Bank of India Act, 1934, but whereas, by the 2003 amendment, a Company registered under the Companies Act, 1956 has been included and the specific exclusion of Non-Banking Financial Companies in the 1997 Act has been left out by the 2003 amendment. Therefore, it is their contention that, if the legislature had wanted to exclude incorporated Companies from the purview of the TNPID Act, they would have excluded it specifically and would have included Non-banking Financial Companies specifically. It is true that when TNPID Act was passed in 1997, it specifically excluded Companies incorporated under the Companies Act, 1956 and Non-Banking Financial Companies. The bad experience of the Government showed that, fly-by-night operators floated incorporated Companies for their finance business in order to get out of the net of the TNPID Act. In order to curb that, TNPID was amended in the year 2003. Companies incorporated under the Companies Act were included and the specific exclusion of Non-Banking Financial Companies was deleted, because, NBFCs, by their very nature of business, will fall within the definition of the word 'Financial Establishment'. Non-Banking Financial Establishments/Institutions can be proprietorship or partnership or incorporated Companies. Their very nature of business is to receive deposits and earn profits through the deposits. Had there been no reference to Incorporated Companies and Non-Banking Financial Companies in the definition of the word 'Financial Establishment' as in the Pondicherry Act, both of them would have automatically come within the purview of the TNPID Act, if the former (Incorporated Company) is in the business of receiving deposits as held by the Supreme Court in New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry [(2012) 10 SCC 575]. Though superficially New Horizon Sugar Mills Ltd. case may appear to be bringing even an ordinary Sugar Mill incorporated as a Company within the net of TNPID Act and Pondicherry Act, yet, on a closer scrutiny of the facts in that case, it can be seen that there was a nexus between M/s PNL Nidhi Ltd. and New Horizon Sugar Mills Ltd. on account of which New Horizon Sugar Mills Ltd. was brought into the net of Pondicherry Act.

35. Mr.Ramakrishnan, learned amicus curiae submitted that, for a body to be qualified as a "Financial Establishment", it should carry on "the business of receiving deposits". These words found in the TNPID Act as originally enacted have been left undisturbed

by the Amendment Act 30 of 2003. Mr. Ramakrishnan emphasised on the article "the" and submitted that the business of the Financial Establishment must be receiving deposits. There is sufficient force in the argument of Mr. Ramakrishnan, because the article "the" has to be given its due meaning as held by the Supreme Court in Shri Ishar Alloys Steels Ltd., Vs. Jayaswals NECO Ltd. [AIR 2001 SC 1161] while interpreting the words "the bank" in Section 138 of the Negotiable Instruments Act. Sri P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition says:

"The" is the word used before nouns, with a specifying or particularizing effect opposed to the indefinite or generalising force of "a" or "an".

The article "the" directs what particular things or things we are to take or assume as spoken of. It determines what particular thing is meant; that is, what particular thing we are to assume to be meant.

Article 'THE' before word 'agreement' would refer to that agreement which is implicit in the sale occasioning the export. And the agreement spoken of must be the agreement with foreign buyer. Consolidated Coffee Ltd. v. Coffee Board Bangalore, AIR 1980 SC 1468. [Constitution of India, Art. 286 (2); Central Sales Tax Act (74 of 1956), S. 5(3)]

36. It may be profitable to extract the following self explanatory passage from the Constitution Bench judgment of the Supreme Court in Gujarat University v. Shri Krishna [AIR 1963 SC 703]:

"When the Legislature intended to provide English as the sole medium of instruction, definite article 'the' was used while in other cases indefinite article 'a' was used denoting thereby that the medium would be one out of several."

37. To my mind, the definition of the word "Financial Establishment" is so candid that, it requires no great hairsplitting arguments at all. An interpretation of a provision is required only when there is a confusion in the language and not otherwise. For any person who has minimum knowledge of English, the definition of the word "Financial Establishment" can cause no confusion. The Act itself was passed to curb the menace of fly-by-night operators who are into the business of receiving deposits. The word "business" has been defined in Sri P. Ramanatha Aiyar's Law Lexicon 3rd Edition as follows:

"The word "business" has been held to denote an activity with the object of earning profit."
[See Senairam Doongarmall vs Commissioner Of Income-Tax - 1961 AIR 1579]. The word "business" is

not defined exhaustively in the Income-tax Act, but, it has been held both by this Court and the Judicial Committee to denote an activity with the object of earning profit. To say that a business is being carried on, means no more than that profit is to be earned by a process of production.

38. Therefore, if a person is into the business of receiving deposits, it clearly means that he is receiving deposits with the object of earning profits from the deposits. When a Company receives deposits under the Companies Act, it can be used for two purposes. If it is a Company which is into the business of receiving deposits, it can use the deposits directly for generating profits. If the Company is a simple manufacturing company, it can use the money received as deposit from the public for the purpose of running its manufacturing unit. Merely receiving deposits from the public by a Company for augmenting its financial base cannot lead to the inference that it is carrying on the business of receiving deposits as defined in Section 2(3) of the TNPID Act. No doubt, the ultimate end of the manufacturing Company will be to earn profits by selling their manufactured goods, but that cannot be an indicator to bring them into the net of the TNPID Act. A manufacturing unit if it receives deposits under the Companies Act, is governed by the provisions of the Companies Act, 2013 and at present, Section 74 which is more stringent, takes care of a contingency where the Company is not able to repay the deposit to the depositors for various reasons. The deposits so received from the public is a loan simpliciter repayable with statutory interest. In fact, while receiving deposits under the Deposit Rules framed under the Companies Act, the receiving Company cannot pay fancy interest. They have to pay only the interest fixed by the Reserve Bank of India and nothing more. Whereas, TNPID Act was enacted because, fancy interest was being offered by Companies which were into the business of receiving deposits to lure innocent public. To say that an ordinary manufacturing unit which receives deposits under the Companies Act exclusively for augmenting its resources for the purpose of running its manufacturing unit and which fails to repay a depositor can be prosecuted under the TNPID Act, will not only mean enlarging the scope of the definition of the word "Financial Establishment" under the TNPID Act, but would also be against the objective for which the Act was passed.

39. On behalf of the State, it was pointed out that if the Memorandum of Association of a Company permits the receipt of deposits, then that Company should be deemed to be a Financial Establishment within the meaning of the TNPID Act. Company Law permits a Company incorporated under the Companies Act to receive deposits from the public for augmenting their business and for that purpose, the Memorandum of Association must contain a clause permitting the Company to receive such deposits in the first instance. Only if such a clause is there in the Memorandum of Association, can the Company be entitled to receive deposits from the public. The existence of this clause in the Articles of Association is not the guiding factor. The determinative factor

is, what is the nature of the business activity of the Company. This is a question of fact which will have to be determined on the available evidence. If a manufacturing Company ventures into the business of receiving deposits, (emphasis supplied) and defaults, they cannot escape from TNPID Act. As long as they do not venture even a wee bit into the business of receiving deposits, they need not fear TNPID Act, even if they receive deposits from public for augmenting their resources which will be treated as loan.

40. We can profitably look into the Constitution Bench judgment of the Supreme court in Tolaram Relumal and another v. The State of Bombay [AIR 1954 SC 496] which is a bedrock case on the interpretation of a Penal Statute, wherein it is stated as follows in para 9:

"9..... it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As point out by Lord Macmillan in London and North Eastern Railway Co. v. Berriman [1946] A.C. 278, 295),

"where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.""

41. It is the contention of Mr.R.Sankaranarayanan, that the specific exclusion of Non-Banking Financial Company and specific inclusion of incorporated Company in the definition of the word "Financial Establishment" in 2003 would mean, any deposit received by a Company which is not a Non-Banking Financial Company, will fall within the purview of Section 5. Non-Banking Financial Company is not a body in abstract. It has been defined in Section 45-I(f) of the Reserve Bank of India Act, 1934 which is as follows:

"45-I(f) "non-banking financial company"
mean--

(i) a financial institution which is a Company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette,

specify."

42. In Section 45-I(f), the expression "which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner" is somewhat similar to the definition of the word "Financial Establishment" in TNPID Act. One difference is, the word "principal" is not there before the word "business" in Section 2(3) of TNPID Act. From an analysis of these two Sections, it is clear that, the Legislature wanted to bring into the net of TNPID both Non-Banking Financial Companies and incorporated Companies which are into the business of receiving deposits within the purview of TNPID Act. It is not necessary that an incorporated Company should be a Non-Banking Financial Company for being in the business of receiving deposits. An incorporated Company can still do the business of receiving deposits without getting registered as a Non-Banking Financial Company with the Reserve Bank of India. Hence, such contentions will no doubt be covered by TNPID Act. As stated earlier, Non-Banking Financial Companies by their very nature of business will fall within the purview of TNPID Act after it was specifically excluded in 2003. However, it should not be misconstrued that if the major business activity of an incorporated Company is manufacturing, but a minuscule activity is also into finance, they would fall out of the purview of TNPID Act. Even if a small part of their activity is into the business of receiving deposits and generating profits through deposits directly immaterial of the fact that the Company's major activity is something else, yet, such a Company will fall within the definition of the word "Financial Establishment" in Section 3 of the TNPID Act.

43. Though it is clear to me that the definition of the word "Financial Establishment" in TNPID Act does not admit into its fold all Companies irrespective of their nature of business, and only Companies which are into the business of receiving deposits, yet I would also like to address this issue from the perspective of the Philosophy of Penal Law.

44. In Democratic Republican form of Governments, the entire edifice of Penal Law is built upon the Rousseauian Philosophy "that man is naturally good and anything that is not natural has corrupted us from this natural State." When Rousseau propounded this theory, as usual cynics ridiculed it as merely a romantic hypothesis. He has been proved right by later commentators. To quote from the article, "Republicanism and the Foundations of Criminal Law by Richard Dagger [Philosophical Foundations of Criminal Law edited by R.A.Duff and Stuart P.Green, Oxford] :

"If King Rex, to borrow Lon Fuller's famous example, is to rule through law rather than whim or sheer will, there are certain things he must and must not do--make his pronouncements public, for example, and not command his subjects to do what they cannot possibly do. In other words, laws must at least carry the appearance of satisfying Thomas

Aquinas' definition of law as an 'order of reason for the common good by one who has the care of the community, and promulgated.'

45. In England, where there is no Republican form of Government, the purpose of criminal law is heavily dived against the State as noticed in the dissenting judgment of Shah, J., in *State of Gujarat v. Shyamlal* [AIR 1965 SC 1251]:

"The prevailing ideas on the subject of criminal law had been somewhat affected by the English law; and the departures from the rules of the English law which the Committee recommended were founded on this ground, that many of the prominent parts of the English law were based on political considerations, the object of those familiar rules of criminal law being not to bring the criminal to justice, but to protect the people from a tyrannical Government."

(emphasis supplied)

46. The faith in the goodness of ordinary human being is so profound that Viscount Sankey wrote the famous words in *Woolmington vs. Director of Public Prosecutions* [1935 All ER 1] that, "the prisoner is presumed to be innocent unless proved otherwise." In *Sheldrake vs. Director of Public Prosecutions* [2004 UKHL 43] Lord Bingham wrote:

"9. There can be no doubt that the underlying rationale of the presumption in domestic law and in the Convention is an essentially simple one: that is repugnant to ordinary notions of fairness for a prosecutor to accuse a defendant of crime and for the defendant to be then required to disprove the accusation on pain of conviction and punishment if he fails to do so. The closer a legislative provision approaches to that situation, the more objectionable it is likely to be. To ascertain the scope of the presumption under the Convention, domestic courts must have regard to the Strasbourg case law. It has been there repeatedly recognised that the presumption of innocence is one of the elements of the fair criminal trial required by article 6(1): see, for example, *Bernard v France* (1998) 30 EHRR 808, para 37."

[emphasis supplied]

47. Article 11 of Universal Declaration of Human Rights, 1948 states:

"(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which

he has had all the guarantees necessary for his defence."

48. The Supreme Court has declared in [Harendra Sarkar Vs. State of Assam \[AIR 2008 SC 2467\]](#) that presumption of innocence is a human right. Rousseau's proposition of the inherent good of man finds empirical support also. India has a huge population of 1.252 billion living peacefully within a land space of 3.288 million km² (1/3rd the size of U.S.) which is not because of the strength of the State institutions, but in spite of them.

49. Definitions in Penal Law are not intended for semantic debates by trained legal minds, but it is intended for the lay and the laity to understand and act. If an ordinary person reads the definition of the word "Financial Establishment", he will have no doubt in his mind that if he carries on the business of receiving deposits and fails to repay the amount,

he will have to face penal consequences. For a man who is not into the business of receiving deposits, but into the business of ordinary manufacturing, this definition will not and should not instill fear, for that would be deleterious and counter productive to the progress of the Society. Thus looked at from any angle, in my considered opinion, an ordinary manufacturer or a Trading Company, say in jaggery, cannot be prosecuted under the TNPID Act for default in paying its depositor. They can be prosecuted under the Companies Act. It would never have been the intention of the Legislature to give unbridled power to the police to destroy legitimate business in this Country and reduce our countrymen to penury.

50. Coming to the case of Helios, it is contended by the learned counsel for the accused that their main business activity is into Information Technology and that they are not into the business of receiving deposits. During the arguments in the open Court, the website of Helios and Matheson was opened, in which they have represented to the public that they are into Banking and Financial services. Their Directors' Report for 2012-2013 filed with the Registrar of Companies also states:

"while the business focus continues to be on Banking and financial services and insurance, healthcare and technology verticals, the company has taken the initiative to launch services in new horizontals such as big data and analytics, cloud services and mobile technology solutions."

[emphasis supplied]

Thus, prima facie the website and the Directors' Report of Helios belies their contention that they are not into the business of receiving deposits and that they will not come within the meaning of the word "Financial Establishment" under the TNPID Act.

51. As regards Viswapriya, admittedly, they are an incarnation of their previous avathar Viswapriya Financial Services and Securities Ltd., which name speaks for itself. Therefore, the contention of both the Companies that they cannot be brought within the ambit of TNPID Act are rejected.

52. The last contention of Mr.Nithyaesh Natraj is that, the respondent has earlier registered a case in Cr.No.2 of 2015 against Helios based on a complaint given by one Ramalingam and when Helios settled the matter with him, it was not proceeded further by the police and again a second FIR has been registered in Cr.No.5 of 2005 on the complaint of one Dr.Ranjith Chittoori, which is illegal in the light of the law laid down by the Supreme Court in T.T.Antony vs. State of Kerala [(2001) 6 SCC 181].

53. In response to this submission, it is contended by the learned Public Prosecutor that, Cr.No.2 of 2015 and Cr.No.5 of 2015 are in respect of two different transactions on complaints given by two different persons in respect of deposits made by them separately with Helios and therefore, the law laid down in T.T.Antony's case cannot be applied to the facts of this case, as it does not satisfy the test of sameness propounded by the Supreme Court in the said case. In T.T.Antony's case, the Hon'ble Supreme Court ventured to compare and critically examine the FIRs in Cr.Nos.353 and 354 of 1995 with the FIR in Cr.No.268 of 1997 and came to a conclusion that, both have been registered for the same occurrence and therefore, quashed the subsequent FIR. The principle in T.T.Antony's case should be examined in the light of penal provisions in Section 5 of the TNPID Act. Section 5 of the TNPID Act states that "where any financial establishment defaults the return of the deposit or defaults the payment of interest on the deposit" it will be liable for prosecution. From a reading of the above, even in case of a single depositor, if the Financial Establishment fails to return the deposit amount or fails to pay the interest on the deposit amount, an FIR can be launched and investigation taken up. If this Court is to accept the plea of the State that the complainants, deposit receipts and amounts differ and therefore, there is no sameness in the complaints of new depositors, then it would lead to a very disastrous situation, whereby thousands of FIRs will stand registered and each time when the arrested accused is released on bail in one FIR, he can be re-arrested and kept in jail for the whole of his life time as a remanded prisoner. A common sense approach should be adopted and a pragmatic interpretation of the law should be made. A similar situation arose before this Court in V.Ettiappan and others v. Superintendent of Police, Chengalput and another [2002 MLJ Cr1 162], wherein 600 people were cheated by a person and this Court directed that, there can be one FIR and the complaints of other persons should be treated as statement under Section 161(3) Cr.P.C. I am inclined to adopt this procedure in this case and it is not open to the police to keep registering fresh FIRs by obtaining complaint from each depositor and arrest the accused, for that would be a patent abuse of police power. Of course, the trial Court can frame distinct charge vis-a-vis each depositor. The

Deputy Superintendent of Police in his signed written submission has contended as follows:

"The complaint in Crime no.5 of 2015 was received on 01.04.2015. During enquiry in Crime No.2 of 2015, it came to the knowledge of the Investigating Agency that the amount involved in Crime No.2 of 2015 being a sum of Rs.2,19,020, a relatively smaller sum when compared to the present crime no.5 of 2015, was settled to the de facto complainant therein. The course, when amounts involved are settled subsequent to initiation of prosecution, is the area reserved by the TNPID Act for action by the competent authority in consultation with the special court. Since, Crime No.2 of 2015 was not taken charge of by the competent authority as on that date and the status of the said crime no was uncertain and since the deposits and dates of default in the two FIRs were separated by time, on receipt of complaints regarding defaults running to several crores of rupees involving more than 6500 depositors, the investigation agency has registered a separate FIR in Crime No.5 of 2015 on 01.04.2015. Hence, it is submitted that the registration of FIR in Crime No.5 of 2015 is justified and valid in law."

54. The sum and substance of his submission is that, Cr.No.2 of 2015 was registered and Helios settled with the complainant and the case could not be closed because the Competent Authority was not appointed to compound the case. Subsequently, when hundreds of complaints started pouring in, the police registered a fresh FIR based on a complaint given by one Dr.Ranjith Chittoori in Cr.No.5 of 2015 and arrested the accused. This explanation appears more plausible and acceptable to sustain the FIR in Cr.No.5 of 2015. As observed by the Supreme Court in T.T.Antony's case, "the objection is merely one of a form and not of substance and it makes no difference so far as the Final Report is concerned." Therefore, this Court directs the respondent police not to register any fresh FIR and treat all further complaints as 161 Cr.P.C. statements and proceed with the investigation of the case.

55. In the result, the petitions are dismissed. Anything observed on the facts of the case is confined to the decision in these writ petitions and it is always open to the parties to agitate factual questions before the appropriate forum. Consequently, connected miscellaneous petition is closed.

Before parting, this Court places on record its profound appreciation to Mr.A.L.Somayaji, learned Advocate General, Mr.Shanmugavelayudham, learned Public Prosecutor, the amici curiae Mr.R.Sankar Narayanan, Mr.Ramakrishnan Veeraraghavan, Mr.Venkata Varadan and Mr.Sharath Chandran, Mr.Prakash Goklaney and Mr.Nithyaesh Natraj, learned counsel for the accused and finally

for the invaluable help by Mr.M.A.Siddique I.A.S., Commissioner, Tamil Nadu Archives and Historical Research and Mr.A.Rajappa, Research Officer, Tamil Nadu Archives and Historical Research, Egmore, Chennai for making available the old Regulations and enactments from their archival treasure trove.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

gms
To

1.The Secretary to the
Government of Tamil Nadu, Home Department
St.George, Chennai 600 009.

2.The Deputy Superintendent of Police
EOW-I, Anna Nagar, Chennai.

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

4.The Public Prosecutor
High Court, Madras.

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1 cc to Government Pleader.Sr.No.40734

2 cc to Mr.Nithyaesh Natraj, Advocate Sr.No.41437 & 40728

W.P. Nos.14229 and 14664 of 2015

jsv(co)
pmk.11.8.2015