IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.6.2015

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.517 to 519 of 2015

R.C.Mehta @
Richpalchand Mehta .. Petitioner in Crl.RC.No.517/2015

Pramila Mehta .. Petitioner in Crl. R.C.No.518/2015

1. Ajay Mehta
2. Anitha Mehta .. Petitioners in Crl.R.C.No.519/2015

Versus

State by Inspector of Police
Economic offences Wing-II(U)
Vellore, Vellore District. .. Respondent in all Revision cases

Criminal Revision Petitions filed under Section 397 and 401 of Cr.P.C. against the order dated 20.02.2015 passed in Crl.M.P. Nos.235 of 2014; 438 of 2013 and 439 of 2013 in C.C. No.3 of 2012 on the file of the learned Special Judge under TNPID Act, Chennai.

For Petitioners : Mr. G.Kalyan Jabak
for M/s Surana and Surana

For Respondent : Mr. Mohammed Riyaz
Government Advocate (Crl.side)

C O M M O N O R D E R

By consent of counsel for both sides, the Criminal Revision cases are taken up for final disposal.

2. The above revision petitions are filed by the petitioners/A5, A21, A22 & A23, as against the dismissal of the petition filed by them under Section 239 of Cr.P.C. for discharging them from the charges levelled against them in C.C.No.3 of 2012.

3. The respondent police have registered the First Information Report on 25.12.2007 in Crime No.3 of 2007 for the offence under Section 5 of TNPID Act and section 420 IPC, wherein these petitioners have been arrayed as accused in the final report.

4. The case of the prosecution is that the accused persons are running Financial Establishment in Vellore. The accused canvassed and promissed to pay interest at the rate of 24% to the depositors on their investment. Believing the version of the accused, the complainant deposited total sum of Rs.5,00,000/- on various dates in a fixed deposit for two years. After maturity, the complainant demanded to repay the deposit amount with interest. On

09.7.2007, when the complainant went to the office of the Financial Establishment and requested to repay the deposited amount with interest,, one of the staff assaulted and abused the complainant. Therefore, the complaint has been preferred.

5. During the course of investigation, the investigating Officer, EOW - II, Vellore, received complaints from 413 depositors stating that the accused persons defaulted the deposit amount along with interest to the tune of Rs.16,54,60,282/-. Thereafter, charge sheet has been filed in C.C.No.3 of 2012. While so, the discharge petitions have been filed under Section 239 of Cr.P.C. by the present revision petitioners.

6. According to the petitioners, they were not shown as persons responsible for the management of the affairs of the said Financial Establishments. The final report does not contain any specific charge against the petitioners as to how they were involved in the commission of the alleged crime Under Section 5 of TNPID Act. Even according to the prosecution, the petitioners are not responsible for the management of the day to day affairs of any of the financial establishments. None of the witness set out in the final report has either directly or indirectly implicated the petitioners for the conduct of business of any of the Financial establishment. According to the petitioners, they have not received any amount from any one of the depositors or signed any of the pronotes or they stood as witness to any of the pronotes filed along with the charge sheet. The petitioners are neither Partners nor Directors in the affairs of the management of the Financial Establishments.

7. The petitioners would contend that none of the witnesses have stated in their 161 Cr.P.C. statements that they canvassed and collected deposits from any of the depositors and there are no statement of witnesses that the petitioners fraudulently or dishonestly induced any of the depositors to deposit money. Further, none of the witnesses have stated about the participation of the petitioners in the conduct of the business carried on by the Financial Establishments. The petitioners would further contend that the ingredients of the offences under sections 420 and 406 IPC are not made out against them and there are no materials available to invoke section 5 of the TNPID Act. On these grounds, the petitioners filed petitions under Section 239 of Cr.P.C. to discharge them from the charges in C.C.No.3 of 2012. Since the same were dismissed, the petitioners are before this Court.

8. It is the submission of the learned counsel for the petitioners that the petitioners are not directly involved in the alleged offence. Accused No. 21 is the wife of accused No.5 and accused Nos.22 and 23 are the son and daughter-in-law of the fifth accused. Merely because the fifth accused is a shareholder of one of the financial institutions, the petitioners in Crl.RC.Nos.518 of 2015 and 519 of 2015 have been arrayed as accused. It is the further contention of the learned counsel for the petitioners that there is no specific allegation against accused Nos. 22 and 23 and that there is no iota of evidence to show that they were incharge of the affairs of the management of accused Nos.1 to 3. It is also the contention

of the petitioners that the charge sheet only makes a general, vague and empty allegation that all the accused 1 to 25 have committed the offence and that there is no specific allegation levelled against each of the accused. Such generic allegations made by the prosecution are not sufficient to frame charges against each of the accused. The learned counsel submitted that there is no evidence to prove that the petitioners herein have directly participated in the collection of funds. Further more, final report does not contain the statement that the petitioners were directly involved in the alleged offence. Therefore, it is the submission of the learned counsel that the Court below ought to have allowed the dicharge petitions instead of dismissing them.

9. Per contra, learned Government Advocate (Criminal side) would contend that statement of 413 persons have been recorded by the investigation officer which would speak volumes about the offence committed by the accused. Further, all the 413 persons have specifically stated that these accused have collected money from various persons. According to the learned Government Advocate, final report is only a culmination of the proceedings initiated and, therefore, the contention of the petitioners that there is no specific allegation against them in the final report cannot be accepted. Further, the petitioners in Crl.RC.No.518 and 519 of 2015 /accused Nos.21,22 and 23 are the wife, son and daughter-in-law of the petitioner in Crl.RC.No.517 of 2015/accused No.5, who is one of the partners in the financial institution and who has collected funds for the institution and failed to repay the same. Therefore, the Court below is right in dismissing the discharge petitions filed by them. In such circumstances, interference of this Court is not warranted.

10. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal side) and perused the materials available on record.

11. At the outset, the argument of the learned counsel for the petitioners that there is no material evidence available against the petitioners cannot be accepted for the simple reason that statement of the depositors clearly shows that the petitioners have collected huge money from them and thereafter, with an intention to cheat them did not repay the deposited amount. The petitioners in Crl.R.C.Nos.518 and 519 of 2015/ accused 21,22 and 23 themselves have admitted that they are the family members of the fifth accused, who is one of the partners of the A2 financial establishment. Further, many of the witnesses have clearly spoken to in their statements that the petitioners took part in the day today affairs of the financial establishment. As rightly pointed out by the Court below, the entire records would show that there are prima facie grounds and materials to frame charges against these petitioners. In fact, the trial court pointed out that the petitioners 22 and 23 are the son and daughter-in-law of A-5 who is one of the partners of A-2 financial establishment along with A-4, who is said to be the prime accused in this case. It is further pointed out that in the statement recorded under Section 161 of Cr.P.C. the witnesses have categorically stated about the canvas and collection of amount by the petitioners herein. It is also pointed out that the witnesses have spoken to about the

involvement of the petitioners herein in the day to day affairs of the A-2 financial establishment. While that be so, it cannot be said that there is no material evidence to connect the petitioners to the offence alleged or the prosecution did not produce any prima facie evidence to subject the petitioners to trial in the criminal case.

12. The Hon`ble Supreme Court in catena of judgments held that if prima facie case is made out agaisnt the accused, definitely, trial has to go. It is useful to refer the judgment of the Hon`ble Supreme Court in SAJAN KUMAR V. C.B.I (2010 9 SCC 368), wherein it has been held as follows:-

> "Judge while considering the question of framing the charges under Section 228 Cr.P.C. has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out"

13. In these revisions, it is not the case of the petitioners that there is no prima facie evidence or evidence is totally unworthy of credit. The evidence clearly shows that prima facie case has been made out. Therefore, following the decision of the Hon`ble Supreme Court and the material evidence made available by the prosecution to make out a prima facie case against the petitioners, I hold that the Court below has rightly dismissed the discharge petition filed by the petitioners and it needs no interference by this Court.

14. Accordingly, the Criminal Revision cases are dismissed. Connected miscellaneous petitions are closed. However, it is made clear that any observation made by this Court in these revision cases will not in any way be taken into consideration by the trial court and it shall decide the matter independently based on the records available.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

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To

1. The Special Judge under TNPID Act
Chennai

2. The Inspector of Police
Economic offences Wing-II(U)
Vellore, Vellore District.

3 ccs to M/s. Surana & Surana, Advocate, Sr. 26221, 26220, 26219

KK (CO)
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