IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.19968 of 2015
and M.P.No.1 of 2015

P.Paul @ Sajan .. Petitioner

Vs

State by
The Inspector of Police
Economic Offences Wing-II
Coimbatore. .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the case in C.C.No.17 of 2014 pending on the file of the Hon'ble Special Court under Tamil Nadu Protection Interest of Depositors in Financial Establishments Act, 1997, Coimbatore.

For PetitioneR : Mr.Manoj Sreevalsan

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

ORDER

This petition has been filed to call for the records of the case in C.C.No.17 of 2014 pending on the file of the Hon'ble Special Court under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Coimbatore.

2. On 11.08.2015, this Court passed the following order:

> "It is seen that the petitioner is prosecuted for the offences under Sections 120B, 406, 420 of IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 in C.C.No.17 of 2014 before the Special Court, TNPID Cases, Coimbatore.
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> 2. The allegations against this petitioner is that he was a partner in the first accused company, which was into the business of Emu farming.

> 3. Learned counsel for the petitioner submitted that even according to the prosecution, the petitioner was a partner in the first accused company only for a brief period from 10.07.2011 to 20.08.2011, i.e. for 40 days; whereas the First Information Report in this case was registered only in the year 2014.
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> 4. Under such circumstances, though the trial in this case has commenced, the learned Additional Public Prosecutor is directed to get instructions from the Investigating Officer, under what circumstance, this petitioner is made as an accused.
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> Post 'for orders' on 26.08.2015 at 2.15 p.m."

3. The respondent police have filed a counter refuting the allegations made by the petitioner contending that, the trial in this case has started and four witnesses have been examined before the trial Court.

4. The learned counsel for the petitioner submitted that the commencement of the trial should not deter this Court from exercising its inherent powers under Section 482 Cr.P.C. to quash a prosecution, which on the face of it appears to be an abuse of process of law. Each Court fixes its own parameters for interference under Section 482 Cr.P.C. Accordingly, this Court would loath to interfere where trial has commenced. On facts of this case, it is admitted by the prosecution that this petitioner was a partner in the first accused Company only for a brief period from 10.07.2011 to 20.08.2011,that is only for 40 days. Two deposits were received from R.Shanmugam and R.Viswanathan and that those two depositors have also been paid their deposit amounts. The two depositors are now present before this Court and they also conceded the fact that they have been paid the deposit amounts. Under such circumstances, the police ought not to have included this petitioner as an accused, especially in the light of Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, which reads as follows:

> "5. Default in repayment of deposits and interests honouring the commitment.--Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, or fails to return in any kind, or fails to render service for which the deposit has been made, every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with

fine which may extend to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakhs of rupees."

5. From the above it is seen that, every person responsible for the management of the Financial Establishment shall be punished with imprisonment. This expression should be read with the earlier portion of Section 5, which contemplates failure of the Financial Establishment to repay the deposit. In other words, persons who were responsible for the affairs of the establishment at the time when the failure occurred can only be prosecuted and not those who were in the management at a distant point of time. On that short score alone this petition should be allowed and the prosecution as against the petitioner should be quashed. However, in view of the fact that the trial in this case has commenced, this Court is not inclined to quash the proceedings as against the petitioner. Hence, this Court is confident that the trial Court will bear in mind these legal aspects while apprising the evidence on record at the time of delivering judgment.

In the result, this petition is dismissed. The presence of the petitioner before the trial Court is dispensed with. He shall appear before the trial Court for being questioned under Section 313 Cr.P.C and on the date of judgment. The trial Court is directed to complete the trial expeditiously. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1.The Inspector of Police
Economic Offences Wing-II
Coimbatore.

2.Special Court under Tamil Nadu
Protection Interest of Depositors in
Financial Establishments Act, 1997,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+2 CCS to Mr.Manoj Sreevalsan, Advocate, sr.46481

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