

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM:

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

CrI.O.P.No.26826 of 2013

and MP.Nos.1/2013 and 1/2014

P.Sukumar ... Petitioner/Accused No.21

Vs.

1.The State of Tamil Nadu
rep. by the Superintendent of Police,
Economic Offences Wing, Anna Nagar,
Chennai - 600 040.

2.The Deputy Superintendent of Police,
Economic Offences Wing, Anna Nagar,
Chennai - 600 040.

3.N.Ramesh Babu @ N.Ramesh ... Respondents/Complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records connected with CC No.17 of 2013 on the file of the Special Judge, TNPID Act, Chennai-600 104 and quash the charge sheet and all consequential proceedings on the file of the Special Judge, TNPID Act, city Civil Court, Chennai-600 104.

For Petitioner : Mr.G.V.Udayakumar

For Respondents : Mr.C.Emalias, APP -R1 & R2

O R D E R

The petitioner herein is arrayed as A21 in Cr.No.3/2009, on the file of the Deputy Superintendent of Police, Economic Offences Wing-II, Chennai-40, culminated as CC.No.17/2013 on the file of the Special Judge, TNPID Court, Chennai, for the offences under sections 420, 406, 409 r/w 120B IPC and section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 (hereinafter shortly referred to as TNPID Act) and Sections 4 and 5 of the Chit Funds Act r/w Section 58(B) of the RBI Act.

2.The criminal proceedings, which is now sought to be quashed herein, is initiated on the basis of the complaint given by the third

respondent herein by name N.Ramesh Babu @ N.Ramesh and the same is registered as FIR in Economic Offences Wing, Chennai-40 Cr.No.3/2009 against A1/Suprabath Investments, A2/Krishna Finance Company, A3/Balaji Hire Purchase Private Limited and 10 named individuals and other unnamed individuals. The named individuals were, during the relevant point of time, the Directors of the above three financial institutions. The specific allegations raised in the complaint are that the defacto complainant has deposited a sum of Rs.49,21,530/- in 84 deposits in his name as well as in the name of his family members between 1997 and 2004 in the above three financial institutions by believing the assurance given by them for repayment of the deposit amount with higher interest at 24% p.a. Whereas, the financial institutions from January 2009 onwards failed to pay any amount towards either interest or principal and the total amount due to the defacto complainant from the above three financial institutions is Rs.68,78,215/- towards principal and interest to the tune of Rs.19,56,685/-. In spite of repeated demands, the amount was not repaid by either of the accused and the defacto complainant was given one cheque for Rs.1,87,736/- on 28.3.2009 and the same was presented for collection, but it was returned dishonoured as the account was already closed. Thereafter, when the defacto complainant went to the office and demanded repayment of the amount, he was assaulted by A6/Devaraj and other Directors, who also threatened to kill him if the amount is demanded back. With such allegations, the defacto complainant filed the complaint before the Deputy Superintendent of Police, EOW, Chennai.

3.The petitioner herein, after coming to know about the registration of the complaint, addressed a communication on 30.10.2009 to the Superintendent of Police and the Deputy Superintendent of Police attached to Economic Offences Wing, Chennai stating that the petitioner has been a practicing Advocate for more than 40 years and a legal advisor for number of banks, Financial Institutions, Insurance Companies and many corporate sectors and he has nothing to do with the financial institutions mentioned in the complaint. It is further stated therein that himself and his wife are only the shareholders in M/s.Suprabath Chits and Investments (P) Ltd and he has nothing to do with M/s.Balaji Hire Purchase (P) Ltd and M/s.Krishna Finance and he did not give any consent to appoint him as Director of M/s.Suprabath Chits and Investments (P) Ltd and he did not sign in any declaration for accepting the directorship and he did not receive any communication in this regard. It is also stated therein that the petitioner herein did not receive any notice with regard to the Board meetings as well as the General Body meetings and he never attended the company and took part in any of the administration or management of the day today affairs of the company, as such, the allegations that he being one of the directors of the company, canvassed for the deposits of the complainant and others, are totally false and his appointment as Director is in violation of the relevant provision of the Companies Act and he was thus made as a

nominee Director of the Company, without his knowledge, consent or permission and any legal action against him for non repayment of the amount is liable to be dropped.

4.While so, the Government by G.O.Ms.No.215 Home (Police XIX) Department, Dated 23.2.2010, in exercise of the powers conferred by Section 3 of TNPID Act, passed an ad interim order attaching the movable and immovable properties of K.Kannaian @ Babu, Managing Director and others of M/s.Suprabath Chits and Investments (Private) Limited and its sister concerns viz., M/s.Balaji Hire Purchase (Private) Limited and M/s.Krishna Finance, Chennai and the properties of T.Kannappan, Director of the said Financial Establishment.

5.Similar representation was sent by the petitioner to the Principal Secretary to Government, Home department, Chennai on 15.9.2012, while opposing the order made by the Government in G.O. Ms.No.529 Home (Police XIX) Department, dated 13.7.2012, attaching the immovable property of the petitioner for repayment of depositors and additional information given therein is that property sought to be attached was purchased by him during 1999 much before the deposit period mentioned in the complaint. The Joint Secretary to Government, on receipt of such representation dated 15.9.2012, has forwarded the copy of the same to the Additional Director General of Police, EOW, Chennai. Pursuant to G.O.Ms.No.529 dated 13.7.2012, enquiry notice dated 19.2.2013 was issued by the Competent Authority & District Revenue Officer, Chennai Collectorate, to the petitioner, calling upon him to appear before the Competent Authority on 26.2.2013 and to submit his objections along with necessary documents. In response to the same, the petitioner submitted his representation dated 1.3.2013 to the competent authority. However, on 10.5.2013 the Tahsildar, Egmore-Nungambakkam Taluk came and affixed the attachment notice in the property, which compelled the petitioner to send another representation dated 10.5.2013 addressed to (i)the Principal Secretary to Government, Home Department, Chennai, (ii)the Deputy Inspector General of Police, EOW, Chennai (iii)the Competent Authority and District Revenue Officer, Chennai Collectorate and (iv) the Tahsildar, Egmore-Nungambakkam Taluk, Chennai, requesting them to withdraw ad-interim order of attachment and for direction and instruction to the Tahsildar, Egmore to desist from taking further action, failing which, take legal action for damages and defamation to the tune of Rs.1,00,00,000/-. The Principal Secretary to Government has, on receipt of such representation dated 10.5.2013, by letter dated 10.6.2013 forwarded the copy of the same to the Additional Director General of Police, EOW, Chennai for necessary action.

6.The petitioner also sent a letter dated 20.5.2013 to K.Kannaian @ Babu, stating that he has not given his consent at any time to be a Director of M/s.Suprabath Chits and Investments Pvt.

Limited and calling upon him to furnish details of the companies floated by Kannaian @ Babu and regarding the Directors and partners and copy of registration of the said concerns and other relevant details and also non-intimation about his nomination etc. On receipt of the same, K.Kannaian @ Babu sent a reply dated 17.6.2013 to the petitioner, copy of which is addressed to the Deputy Superintendent of Police, EOW, Chennai, in which, it is admitted that the petitioner herein is neither a Director nor a partner in either of the concerns viz., M/s.Suprabath Chits and Investments Pvt. Ltd, M/s.Balaji Hire Purchase Pvt. Ltd and M/s.Krishna Finance and he was only a nominee Director of M/s.Suprabath Chits & Investments Pvt. Ltd without his consent and knowledge. The reply also refers to the fact that the petitioner never attended any Board Meeting nor took part in any of the affairs of the company. It is further stated therein that the defacto complainant N.Ramesh has no connection with M/s.Suprabath Chits & Investments Pvt. Ltd and he invested only in the following three companies viz., (i)Balaji Hire Purchase (P) Ltd (ii)Krishna Finance Ltd and (iii)Suprabath Investments and no complaint is made against Suprabath Chits and Investments Pvt. Ltd. The said K.Kannaian addressed another letter dated 23.9.2010 to the Deputy Superintendent of Police reiterating the same points and requested to relieve the petitioner from the criminal case.

7.In the mean while, the Deputy Superintendent of Police, EOW, Chennai/IO has made investigation into the complaint and examined the witnesses and collected records and obtained orders for attaching the immovable properties of the petitioner and others and after completing the investigation, filed charge sheet on 16.11.2012 and the same was also taken up on file as CC No.17/2013 on 21.8.2013.

8.The petitioner herein, having found no greater response from the authorities concerned has, in the mean while, thought it fit to file the present petition for quashing the proceedings initiated against him on the following grounds: (a)the petitioner has nothing to do with either of the companies mentioned in the complaint (i) M/s.Suprabath Investments (ii)M/s.Balaji Hire Purchase Pvt. Ltd and (iii)M/s.Krishna Finance; (b)he was only the shareholder in M/s.Suprabath Chits and Investments Pvt. Ltd. which is totally a different entity from Suprabath Investments; (3) the three companies mentioned in the complaint and five companies mentioned in the charge sheet had different constitution which are as follows: M/s.Balaji Hire Purchase is a private company, having Board of Directors (2) M/s.Suprabath Chits and Investments Pvt. Ltd. is a limited company incorporated under the Companies Act having its own Board of Directors (3)M/s.Krishna finance is a partnership concern having K.Kannaian @ K.Babu and others as its partners and M/s.Suprabath Investment is also a partnership concern, having Kannaian @ Babu and others as its partners. (4)the petitioner was only nominated as Director of M/s.Suprabath Chits and Investments Pvt. Ltd. without his knowledge and consent and the documents showing him as Director were

all signed only by the Managing Director and not by him and he never attended any board meetings or annual general body meetings and his directorship, if any became lapsed due to his non-attendance of all the meetings of the Board for a continuous period of 12 months. (5) The appointment of the Director in the directorship without any Director Identification Number cannot be valid and the petitioner, in the absence of one such Director Identification Number, cannot be legally recognised as one of the Directors of the company and he cannot be permitted to act legally as Director (6) there was no material to show that he played any role in floating the companies and in collecting the deposits and in the act of default, if any, in repayment of the amount either principal or interest and (7) The chit transaction under TNPID Act does not amount to deposits collected by M/s. Suprabath Chits and Investments Private Ltd and is outside the purview of TNPID Act. The learned counsel for the petitioner would reiterate the same points in the argument advanced before this court.

9. Such stand taken by the petitioner is seriously opposed by the respondent IO as well as the defacto complainant by drawing the attention of this court to the materials collected through oral statement made by the witnesses and the documents collected in the course of the investigation, regarding the status of the petitioner in the financial institutions in question and the role played by the petitioner in the administration and management of the companies and in the act of cheating the innocent public and poor depositors/subscribers.

10. Heard the rival submissions made on both sides and perused the records.

11. As already stated, the criminal proceedings is initiated against the financial institutions on the basis of the complaint given by the third respondent /defacto complainant by name N.Ramesh Babu @ N.Ramesh. The allegations raised in the complaint given by the third respondent regarding the collection of the deposits and non-repayment of the amounts so deposited and interest accrued on the same are against three companies by names (i) M/s. Suprabath Investments (ii) Balaji Hire Purchase Pvt. Ltd and (iii) Krishna Finance. The complaint does not furnish the particulars regarding the number of deposits and the quantum of amounts deposited in the particular companies. The complaint proceeds as if all the companies had their office at Door No.18, 10th Cross Street, Indira Nagar, Chennai-20 and their Branch office at No.65A/1, Sullivans Garden Street, I floor, Mylapore, Chennai-4 having one Kannaian @ Babu as their Managing Director and P.Sukumar, Kuppusamy, G.Devarajan, D.Kannappan Gurukkal, K.Rajkumar, K.Srinivasan, UmaNagarathinam, Sulokshana Venkadappa, T.S.Gowriraj, Kothanda Naidu, Venkata Subbaiya, C.K.Santhabai and K.Kuppusamy Naidu, one among whom is the petitioner herein as their Directors.

12. Whereas, the Investigation Officer after investigation, filed

the charge sheet against five companies namely (i)Suprabath Chits and Investments Private Limited (ii)Suprabath Investments (iii)Balaji Hire Purchase Private Ltd. (iv)Krishna Finance (v)K.B. Investments and 16 named individuals. While all the financial institutions are in the complaint described as Private Limited companies having one Kannaian @ Babu and the petitioner herein and others as their Managing Director and Directors, the charge sheet do disclose a different picture that M/s.Balaji Hire Purchase Private Limited is shown as Private Limited company having A6, A7, A9, A14 and A17 as its Directors. M/s.Suprabath Chits and Investments Private Limited is again a Private Limited company floated by A6 to A16, A20 and the petitioner herein/A21 as directors of the same. M/s.Krishna Finance is a partnership firm having A6, A8, A16, A18 and A19 as its partners. M/s.K.B. Investments and M/s.Suprabath Investments are shown as finance companies having A6 to A21 as their Directors. The allegations raised in the charge sheet are that the Directors and Partners of the respective financial establishments canvassed and collected deposits from the depositors and defaulted in the repayment of the principal along with interest and dishonestly misappropriated the amount by diverting the amount received as subscription from the subscribers for purchasing properties in their names and in the name of their relatives/friends for their personal gain, thereby cheated the innocent depositors.

13.As far as the allegations raised against A2, A3, A4 and A5 in the charge sheet are concerned, except M/s.Suprabath Chits and Investments Private Limited (A1), the Directors of other financial institutions are alleged to have induced the general public to invest in their deposits scheme by promising exorbitant rate of interest i.e., at 24%, 15%, 24% and 21% respectively. As far as M/s.Suprabath Chits and Investments Private Limited/A1 is concerned, the allegations raised in the final report are that the Directors induced the general public to subscribe in their chit funds, both registered and un-registered, by promising exorbitant dividends with the knowledge that it was not possible to sustain such high dividends and with the intention to ultimately cheat the subscribers and enrolled more number of subscribers and ultimately cheated 673 number of its subscribers, by defaulting in repayment of subscription amount and dividend thereof and dishonestly misappropriated the amount in the manner as stated above.

14.The reading of the charge sheet would further reveal that separate charges are framed against A1 to A5. While the charges separately framed against A2 to A5 are for the offences under sections 406, 409 and 420 r/w 120 B IPC, the charges framed against A1 Suprabath Chits and Investments Private Limited are for the offences under sections 406, 409 & 420 r/w 120 IPC r/w Sections 4 and 5 of Chit Fund Act. The additional charges framed against A6 to A21 are for the offence under section 5 of TNPID Act r/w 120 B IPC by stating that A6 to A21 jointly and severally responsible for the management of the financial establishments A1 to A5 during the period

from 1997 to 2009, and they canvassed and collected deposits/subscriptions in the name of A1 to A5 from the general public and defaulted in repayment of the principal/subscription amount along with interest.

15.As far as the petitioner/A21 is concerned, he would stoutly deny his association with A1 to A5 financial institutions in any manner. In order to prove his non-participation in the affairs of A1 to A5 financial institutions, the petitioner has produced certificates from the Registrar of Companies in respect of M/s.Balaji Hire Purchase Pvt. Ltd dated 8.6.1984 and in respect of M/s.Suprabath Chits & Investments Pvt. Ltd dated 17.1.1986, partnership deed dated 1.4.1999 between A6 K.Kannaian @ Babu and A8 T.Kannappa Gurukkal relating to M/s.Krishna Finance, similar partnership deed dated 1.4.2001 in respect of M/s.Suprabath Investments and the same would reveal that the petitioner has in no manner associated with either of the accused i.e., A1 to A5 financial institutions. As a matter of fact, the petitioner is not alleged to be one of the Directors or partners either in Balaji Hire Purchase Pvt. Ltd/A3 or in Krishna Finance/A4 in the final report.

16.It may be true that the petitioner was nominated as one of the Directors of Suprabath Chits and Investments Private Limited as evident from the documents produced by the second respondent/IO such as, list of Directors submitted to the Registrar of Companies and Income Tax Department, Form 23, Special resolution passed appointing the petitioner as Legal Advisor, Annual returns, List of past and present members and debentures holders, List of Directors, Managing Agents and Secretaries etc, particulars of Appointment of Directors and Managers, Annual Returns, List of Directors and details of Share holders for the year 1994 to 2004 in respect of M/s.Suprabath Chits and Investments Private Ltd. etc. The legal objection raised by the petitioner against his appointment as one of the directors of M/s.Suprabath Chits and Investments Private Ltd can be dealt with later.

17.The materials made available herein would not disclose any connection or association between A2 to A5 financial institutions on one hand and the petitioner/A21 on the other hand. Even as per the allegations raised in the charge sheet, the petitioner is one of the Directors of M/s.Suprabath Chits and Investments Pvt. Ltd only and not of A2 M/s.Suprabath Investments, A3 Balaji Hire Purchase Pvt Ltd A4 Krishna Finance and A5 K.B.Investments. Further, there is absolutely no material available either in the form of oral evidence or document in writing in support of such case. It is nobody's case that the petitioner participated in the administration and management of A2 to A5 financial companies in his professional capacity either as practicing Advocate or Legal Advisor or in any other capacity on

Administrative side. Even otherwise, the allegations raised against him are very bald, vague and general in nature. Further, no material is produced before this court to connect him with either of the financial institutions arrayed as A2 to A5. In that event, no liability can be fastened on him for collection of deposits and for default in repayment of the amount so deposited by A2 to A5 financial institutions.

18.Regarding the directorship of the petitioner in M/s.Suprabath Chits and Investments Private Ltd/A1, the petitioner stoutly denied his nomination as one of the directors of the company. It may be true that the respondent/IO has in the course of his investigation, collected the following documents, such as, Minutes book of General meeting held on 16.7.1987 with the signature of the petitioner containing the special resolutions about his appointment as one of the directors of the company, copy of the annual returns, List of past and present members and debenture holders, copy of the list of Directors, Managing Agents and Secretaries etc. copy of the particulars of appointment of Directors and managers, copy of annual returns, List of Directors, copy of the details of share holders for the year 1994-2004, showing the petitioner as one of the Directors of the company. The perusal of the same reveals that except showing the petitioner as one of the shareholders and directors of the company, the same do not reveal any other role played by him in the administration and management of the company in question.

19.As far as the status of the petitioner as one of the shareholders is concerned, the same need not be given any importance for the purpose of fastening any criminal liability on him for the offences referred to above.

20.Regarding his Directorship, it is the specific contention raised on the side of the petitioner that he is nominated so without his knowledge and consent and his appointment is in violation of Section 152 of the Companies Act and the same is not in compliance with the statutory requirements and is hence invalid. It is also contended before this court that there is no material available to show that the petitioner had been continuously attending the meetings during the period in which he held directorship and by reason of his absence for all meetings of the Board for a continuous period of twelve months without obtaining leave from the Board, he ceased to become the Director, as such, the petitioner cannot be held liable for any act in his capacity as Director of the company.

21.At this juncture, the learned counsel for the petitioner has drawn the attention of this court to the nature of the documents produced on the side of the respondent/IO in support of his legal and factual objection against the validity of his appointment as Director of M/s.Suprabath Chits and Investments Private Limited. The legal and factual objection raised herein are seriously opposed by the

respondent IO and the defacto complainant mainly by relying on the documents produced on the side of the IO as above referred to. The perusal of the same would reveal that the petitioner who was one of the Directors of the company, was appointed as the legal Adviser of M/s.Suprabath Chits and Investments Pvt. Limited in the meeting held on 16.7.1987 and he was shown in the statutory records as one of the Directors till 2003-2004 and not thereafter. It may be true that the resolution dated 16.7.1987 would only show that he was appointed as first Director in 1987 and the same would falsify the case of the prosecution that the petitioner as one of the Directors of the company floated the company in 1986. There is absolutely no material to show that he was associated with the company right from the day of its inception and incorporation.

22.Regarding the validity of appointment of the petitioner as one of the Directors is concerned, the provision of law to be looked into is section 152 of the Companies Act. The combined reading of sub clauses (1) to (6) of section 152 would reveal that the appointment of directors of the company can be proposed in general meeting, only after allotting Director Identification Number under section 154 and only after declaring that he is not disqualified to become a director under this Act and the person, who was appointed as a director shall not act as a director, unless he gives his consent to hold the office as director and such consent has to be filed with the Registrar within 30 days of his appointment in the manner as prescribed under law. Whereas, in the present case, no document is produced to show that the statutory provisions are complied with before appointing the petitioner as director of the company. In the absence of non-compliance of the statutory requirements, the appointment of the petitioner as director in the company through resolution dated 16.7.1987 is only on paper and he could not be legally recognised so and he could not act as one of the directors of the company, as such, the petitioner cannot be held for any act of cheating and misappropriation along with other directors of the company. On this legal ground, no criminal liability can be fastened on the petitioner.

23.It is also contended on the side of the petitioner that the nomination of the petitioner is without his consent and knowledge and he never assumed office as and acted as director of the company and participated in the affairs of the company in such capacity. It is note worthy to recollect at this juncture that the petitioner immediately after registration of the FIR, addressed a detailed petition in this regard to the Managing Director of the company, IO, concerned officer of Economic Offences Wing and Principal Secretary to Government, who is competent to deal with the properties acquired by the so called offenders. As a matter of fact, the Joint Secretary to Government, Home (Police XIX) Department, Chennai, on receipt of his petition, ordered for enquiry and the petitioner also appeared before the competent authority and District Revenue Officer, Chennai and reiterated during the enquiry, the same stand as stated before this court in this petition. It is further contended before this

court that as the petitioner did not act as director and as he did not attend the meetings of the Board for a continuous period of 12 months without obtaining leave from the Board, he ceased to be the director under section 167 of the Companies Act and the office of the director shall automatically become vacant. In that event, the petitioner cannot be roped along with other directors for commission of any offence alleged against the directors of the company. This court finds merit and acceptance in the contention so raised on the side of the petitioner.

24. Next legal objection raised by the petitioner herein is that no deposit was collected by M/s. Suprabath Chits and Investments Private Ltd and the transaction carried on by the company is only chit transaction and the default in repayment of chit amount, if any, can only be the subject matter of enquiry before the Registrar under section 64 and the same do attract the penal provision under section 76 of the Chit Funds Act and the director of the company for such offence, can be tried under section 79 of the Chit Funds Act and the same is outside the purview of TNPID Act.

25. The learned counsel for the petitioner in support of his contention as above stated, has relied on the relevant provisions of law under the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997 (hereinafter shortly referred to as 'TNPID Act') and Chit Funds Act. The relevant provisions of TNPID Act are as follows:

Section 2(2) defines "deposit", which means the deposit of money either in one lump sum or by instalments made with the Financial Establishment for a fixed period, for interest or for return in any kind or for any service.

Section 2(3) explains "Financial Establishment", which 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).

Section 3 provides for attachment of properties on default of return of deposits.

Under section 4, the Government shall appoint a competent authority to exercise control over the properties attached by the Government under section 3.

Section 5 is the penal provision for default in repayment of deposits and interests by the Financial Establishment.

Section 5A provides for compounding of offence by the competent authority with the permission of the Special Court, on payment of the entire amount due to the depositors with or without interest.

Section 6 empowers the Government to constitute one or more Special Courts in the cadre of a District and Sessions Judge, for trying any offence under the Act.

Under section 11, appeal remedy is available before the High court against any order of the Special court, within 30 days from the date of order.

Section 12 empowers the Government to appoint a Special Public Prosecutor for each of the Special Court for the purpose of conducting the cases in the Special Court.

Section 13 lays down the procedure and powers of the Special Court regarding offences, as per which, the Special Court shall follow the procedure prescribed in the Code of Criminal Procedure, 1973, for the trial of warrant cases by Magistrates.

The relevant provisions of the Chit Funds Act are sub sections to Section 2 and Sections 64 to 72, 76, 79 and 80, which are extracted hereunder:

S.2(b) "chit" means a transaction whether called chit, chit fund, chitty, kury or by any other name or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

Explanation.- A transaction is not a chit within the meaning of this clause, if in such transaction.-

(i) some alone, but not all, of the subscribers get the prize amount without any liability to pay future subscriptions ; or

(ii) all the subscribers get the chit amount by turns with a liability to pay future subscriptions :

2.(d) "chit amount" means sum-total of the subscriptions payable by all the subscribers for any instalment of a chit without any deduction of discount or otherwise :

2.(e) "chit business" means the business of conducting a chit ;

2.(f) "defaulting subscriber" means a subscriber who has defaulted in the payment of subscriptions due in accordance with the terms of the chit agreement.

2.(g) " discount" means the sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscribers

or for both ;

2.(h) " dividend" means the share of the subscriber in the amount of discount available under the chit agreement for rateable distribution among the subscribers at each instalment of the chit ;

2.(k) " non-prized subscriber " does not include a defaulting sub-scriber ;

2.(m) " prize amount" means the difference between the chit amount and the discount, and in the case of a fraction of a ticket means the difference between the chit amount and the discount proportionate to the fraction of the ticket, and when the prize amount is payable otherwise than in cash, the value of the prize amount shall be the value at the time when it becomes payable ;

2.(n) " prized subscriber" means a subscriber who has either received or is entitled to receive the prize amount ;

2.(r) " subscriber" includes to a person who holds a fraction of a ticket and also a transferee of a ticket or fraction thereof by assignment in writing or by operation of law.

S.64. Disputes relating to chit business- (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration of each party thereto is one or the other of the following, namely:-

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation.- For the purpose of this sub-section, a dispute touching the management of a chit business shall include-

(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not ; and

(iii) a refusal or failure by a subscriber, past

subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No Civil Court shall have jurisdiction to entertain suit or other proceedings in respect of any dispute referred to in sub-section (1).

Section 65 provides for different period of limitation for different dispute referred to the Registrar under section 64.

S.66. Settlement of disputes- (1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of Section 64, he shall, subject to such rules as may be prescribed, settle the dispute himself, or refer it for disposal to a person appointed by him (hereafter in this chapter referred to as the nominee).

(2) Where any dispute is referred under sub-section (1) for settlement of the nominee, the Registrar may, at any time for reasons to be recorded in writing, withdraw such dispute from the nominee and may settle the dispute himself, or refer it again for settlement to any other nominee appointed by him.

Section 67 lays down the procedure for settlement of disputes and powers of Registrar or nominee.

Section 68 provides for attachment before judgment and other interlocutory orders pending award in a dispute before the Registrar or nominee.

Section 69 deals with the decision of Registrar or nominee, which reads as follows:

Decision of Registrar or nominee- When a dispute is referred to arbitration under this Chapter, the Registrar or the nominee, may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and the fees and expenses payable to the Registrar or the nominee, and such an award shall not be invalid merely on the ground that it was made after the expiry of the period, if any, fixed for deciding the dispute by the Registrar, and shall, subject to appeal under Sec.70, be final and binding on the parties to the dispute.

Section 70 provides for appeal against the decision of Registrar or nominee to the State Government, within two months from the date of the order or award.

Under Section 71, every order passed by the Registrar or the

nominee under section 68 or section 69 and every order passed by the State Government in appeal under section 70, for recovery of any money.

Section 76 is the penalty provision for contravention or abetting the contravention of any of the provisions mentioned therein.

Section 79 deals with the proceedings against the company for any offence committed under the Act.

Under section 80, the court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, is vested with the jurisdiction to take cognizance and try an offence punishable under this Act.

26. The combined appreciation of the definitions of 'deposit' and 'Financial Establishment' under TNPID Act and 'chit' and 'chit amount' under Chit Funds Act and other relevant provisions regarding the remedies available in case of default in repayment of deposits and interests and the competent authority under the Act to do various acts for any default in repayment of deposits and interests by the Financial Establishment and the nature of the proceedings to be initiated in case of default in repayment of deposits and period of limitation provided under the TNPID Act and the nature of dispute arising out of the chit transaction, the manner of settlement and disposal of the same, period of limitation for the same and the competent authority to deal with the disputes, the penalty provision under the Chit Funds Act and the constitution of the Special Court in the cadre of a District and Sessions Judge as Presiding Officer of the same for trying any offence under the TNPID Act and the appointment of competent authority to try the offence under the Chit Funds Act and different appellate authority for entertaining the appeal against the order of the Special Court under TNPID Act and against the order of the Registrar or nominee under the Chit Funds Act as explained above would undoubtedly go to show that the chit transaction is different transaction and is not covered under the definition of 'deposit' under TNPID Act. The definitions of 'deposit' and 'chit amount' are totally different. While the deposit means the deposit of money with the Financial Establishment for a fixed period for interest or for return in any kind or for any service, 'chit' means the transaction, under which a person enters into an agreement with a specified number of persons that everyone of them shall subscribe a certain sum of money by way of periodical installments over a definite period and that each subscriber shall, in his turn as determined by lot or by auction or by tender or in such other manner, as may specified in the chit agreement, be entitled to the prize amount. Both the Acts provide for different mechanism and different terms and conditions for commencing and conducting such business and different authority to deal with the matters in relation to the business and different courts and different procedure to deal with the disputes arising out of such business and different appellate authority and different period of limitation for filing such appeals. As a matter of fact, while the business of receiving deposits as defined under TNPID Act under any scheme or arrangement or in any

other manner is different, Section 12 of the Chit Funds Act prohibits transacting business other than chit business by a company, except with the general or special permission of the State Government. When the two Acts deal with two different nature of transactions and when it is nobody's case that M/s.Suprabath Chits and Investments Private Limited, where the petitioner/A21 is said to be nominated as director, is collecting deposits in addition to chit business, no prosecution can be allowed to go on against the petitioner herein before the Special Court for any alleged act of default or defraud of deposits as director of A1 company.

27.Insofar as Section 58-B of the Reserve Bank of India Act is concerned, it provides for penalty for making any willfully false statement, while canvassing deposits of money from public. Here again, the same does not fall under the Chit Funds Act.

28.In this connection, an argument is sought to be advanced before this court on the side of the respondents that M/s.Suprabath Chits and Investments Pvt. Ltd/A1 is a controlling company and the investments collected and deposited in other financial institutions are diverted to this company through other companies and the investment with other companies is transferred to A1 company. Thus way, the Managing Director or Directors/partners as the case of may be, of A1 and of other companies are liable to be prosecuted for the offences as referred to above. In my considered view, such argument deserves no merit and acceptance mainly for want of any allegation either in the complaint or in the final report. It is relevant to mention at this juncture that the complaint was made only against Suprabath Investments, Balaji Hire Purchase Private Limited and Krishna Finance. Whereas, M/s.Suprabath chits and investments Pvt Ltd and K.B. Investments are arrayed as accused only in the course of investigation and the final report is filed against A1 to A5 financial institutions and A6 to A21 Managing Director and the Directors of the same. Except alleging in the final report that A6 to A21 in furtherance of their criminal conspiracy, have been jointly and severally responsible for the management of A1 to A5 Financial Establishment during the period from 1997 to 2009 and canvassed and collected deposits/subscriptions in the name of A1 to A5 from the general public and defaulted in repayment of the principal/subscription amount with interest, no specific allegation is made against A1 company as stated above. If that is so, the theory advanced on the side of the respondent IO during argument is only an after thought and newly introduced to suit their case. But such theory is not supported by any allegations or materials.

29.Though the second respondent/IO in the typed set filed by him enclosed the bank statement of accounts held by M/s.Suprabath chits and Investment Pvt Ltd. in ING Vysys Bank between 1.1.2005 and 4.10.2009 to show that there were some transfers from other financial institutions to A1 company, in my considered view, the other

financial institutions having been stated to be the sister concerns, any transfer of amount within themselves would not make out one such case as alleged above.

30.To sum up, the petitioner, who is arrayed as A21 is neither director nor partner in either of A2 to A5 financial institutions and his nomination as director in M/s.Suprabath Chits and Investments Pvt. Ltd. which is A1/financial institution, is legally not valid and is only a paper document and is legally not acted upon and he is not shown to have participated in either management or administration of either of the financial establishments. Further, any dispute touching the chit transaction can be the subject matter of the Registrar only and the acts complained of in respect of A1 chit company do attract only the penal provision of the Chit Funds Act and the contravention of the provisions of the Chit Funds Act is cognizable by the concerned Judicial Magistrate and the offences arising out of Chit Funds Act are out side the purview of TNPID Act and the same cannot be clubbed with the proceedings initiated for the offences under TNPID Act.

31.That being the factual and legal position involved herein, the criminal prosecution pending on the file of the Special Judge, TNPID Act against the petitioner is based on no material, unfounded and without jurisdiction and in the event of the same being allowed to continue, the petitioner will be put to serious prejudice, as the same amounts to abuse of process of law. As such, this court is of the view that it is a fit case, wherein, in order to meet the ends of justice, the proceedings initiated against the petitioner herein is liable to be quashed.

32.In the result, this criminal original petition is allowed and the charge sheet in Cr.No.3/2009, culminated as CC.No.17/2013 pending on the file of the Special Judge, TNPID Act, Chennai-104 stands quashed insofar as the petitioner/A21 is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Special Judge, TNPID Act, Chennai.

2.The Superintendent of Police,
Economic Offences Wing, Anna Nagar,
Chennai - 600 040.

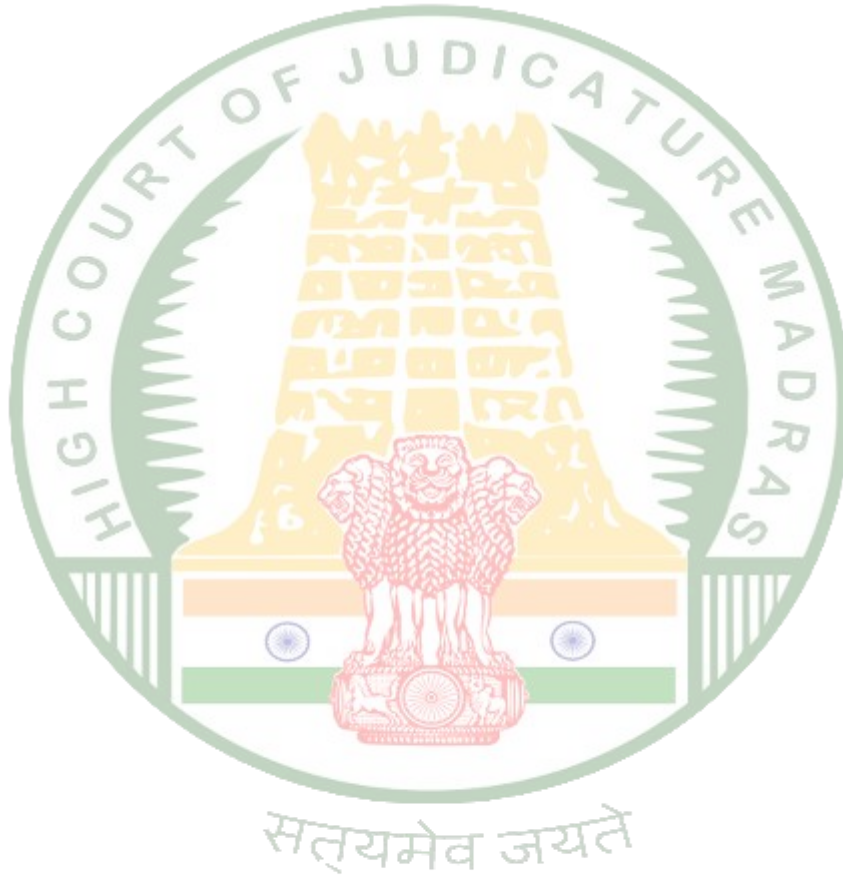
3.The Deputy Superintendent of Police,
Economic Offences Wing, Anna Nagar,
Chennai - 600 040.

4.The Public Prosecutor, High court, Madras.

+1cc to M/s. G.V. Udayakumar Advocate Sr.23603

CRL.OP.No.26826 of 2013

ug[col]
srg 1.10.2015



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