

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.O.P.No.13352 of 2016
and
Cr1.MP.Nos.6857 & 6858 of 2016

G.Fredrick Duraisamy

... Petitioner

Vs.

State Rep.by
The Deputy Superintendent of Police,
EOW - II, Anna Nagar,
Chennai - 600 040.

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C to call for the records in C.C.No.01 of 2014 pending on the file of the Learned Special Judge TNPID Court, Chennai and quash the same.

For Petitioner : Mr.V.S.Senthil Kumar

For Respondent : Mr.C. Emalias
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking a direction to call for the records in C.C.No.01 of 2014 pending on the file of the Learned Special Judge TNPID Court, Chennai and quash the same.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. On the complaint given by one D.Ragothaman, the respondent police registered a case in Crime No. 1 of 2010 and after completing the investigation, the respondent police have filed a final report in C.C.No.01 of 2014 before the Special Court (TNPID cases), Chennai, for offences under Section 5 of TNPID Act and under Section 406, 420 r/w 120-B IPC against 23

accused, of whom, the petitioner has been arrayed as 23rd accused. Challenging the prosecution, the petitioner is before this Court.

4. It is the case of the prosecution that JBJ City Developers Limited (A1), M/s.JBJ Builders and Promoters (A2), M/s JBJ Tours and Travels (A3), M/s JBJ Hotels and Resorts (A4), M/s JBJ Chits Private Limited (A5), M/s JBJ Foundation (A6), M/s. Abode Lee Hedges Impex Private Limited (A7) were promoted by one Justin Devadoss @ David (A8) and his wife Bella Justin (A9) and certain others and deposits were collected from public and the amount so collected were not returned to depositors on the date given.

5. Mr.V.S.Senthil Kumar, learned counsel appearing for the petitioner submitted that the petitioner is a retired Army personnel and that, he himself had invested in the first accused Company and he was not in the helm of affairs of the first accused Company and therefore, he cannot be held criminally liable.

6. Per contra, the Investigating Officer has filed a counter and the learned Additional Public Prosecutor appearing for the respondent has filed a typed set of papers, wherein, sufficient materials have been produced to show about the petitioner's active involvement in the business of A1 Company.

7. Some of the receipts issued by JBJ City Developers Limited have been issued by the petitioner herein, which prima facie shows that the petitioner was responsible for the management of the affairs of A1 Company.

8. However Mr.V.S.Senthil Kumar, learned counsel appearing for the petitioner further submitted that the petitioner was not a Director in the first accused company at the relevant point of time.

9. For the prosecution under Section 5 of the TNPID, it should be shown that the accused was responsible for management of the affairs of the financial establishment and it is not necessary, he should be in the Board of the financial establishment. Since there are sufficient prima facie materials to show that the petitioner was involved in the affair of the financial establishment, this is not a fit case to quash the prosecution. Hence, this criminal original petition is dismissed with liberty to the petitioner to workout his remedy in the manner known to law. Consequently, connected miscellaneous petitions are closed. Whatever stated above shall not, in any way, prejudice the defence of the petitioner.

10. At this juncture, the learned counsel for the petitioner seeks permission for dispensing with the personal appearance of the petitioner before the Trial Court. This Court directs the petitioner to appear before the trial Court, for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. The petitioner shall file an affidavit of undertaking before the trial Court that he will not dispute his identity and that his counsel will cross-examine the prosecution witness on the day, they are examined in-chief and that he will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioner. If the petitioner adopts any dilatory tactics, the trial Court can insist on his presence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sms/ds

To

1. The Deputy Superintendent of Police,
EOW - II,
Anna Nagar,
Chennai - 600 040.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.S.Senthil Kumar, Advocate, S.R.No.42557

Cr1.O.P.No.13352 of 2016

RK(CO)
CA(28/07/2016)

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