

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2016

Delivered on : 04.05.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.574 of 2015

and

M.P.No.1 of 2015

S.P.Arunkumar

...Petitioner/Accused No.4

Vs.

1.State rep. by its

The Deputy Superintendent of Police,
Economic Offences Wing-II,
Coimbatore.

...Respondent

Prayer: Petition filed under Sections 397 and 401 of Cr.P.C., against the order dated 28.05.2015 made in Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 passed by the Learned Special Judge, Special Court under TNPID Act cases, Coimbatore.

For Petitioner : Mr.S.Ayyathurai

For Respondent : Mr.V.Arul
Government Advocate (Crl.Side)

O R D E R

The Petitioner has focused the instant Criminal Revision Petition before this Court as against the order dated 28.05.2015 in Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 passed by the Learned Special Judge, Special Court under TNPID Act cases, Coimbatore.

2.The Learned trial Court, while passing the impugned order in Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 dated 28.05.2015 in Cr.No.2 of 2012 (filed by the Petitioner/A4 under Section 227 Cr.P.C., praying for Discharge) at paragraph 8 inter-alia had observed that "... Canvassing persons are also responsible for the affairs of the Company of Firm. Hence, considering the materials on record and available evidences, it is not a fit case to discharge the Accused" and resultantly, dismissed the Petition.

3. Challenging the dismissal order dated 28.05.2015 in

Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 passed by the trial Court, the Petitioner/A4 has preferred the present Criminal Revision Petition before this Court contending that the trial Court should have seen that the Petitioner/A4 was not in-charge of day-today administration of the Company, as he was to collect only the deposits, on the instructions of the Management.

4.According to the Learned counsel for the Petitioner, the trial Court should have seen that the Petitioner/A4 had only explained the business of the Company and collected the deposits, forwarded the same to the head office and handed over the birds to the depositors.

5.The Learned counsel for the Petitioner takes a stand that subsequently the Petitioner was not deputed to deal with the administration matter of day-today affairs and he was not delegated with any powers of management and he was only a paid servant and drew a salary of Rs.24,000/- per month. As such, he cannot be fastened with any act of criminal offence. It is also represented that the Petitioner is noway connected with the administration of the Company attracted under Section 5 of the Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act, 1997.

6.The Learned counsel for the Petitioner takes an emphatic plea that the case of the Respondent is that the Petitioner was arrayed as A4 in C.C.No.16 of 2012 and he was involved in all the Management's day-today affairs of the Financial Establishment by canvassing the general public to deposit, to collect deposit money in the name of A1 and for entering into an agreement between A1 and the depositors, supplying feed to the Emu birds, attending complaints regarding deposits. Therefore, these acts were noway connected with the management or the Directors and it is only a clerical work turned out by a salaried employee.

7.The learned counsel for the Petitioner takes a plea that the Respondent had not produced any piece of document to establish that the Petitioner/A4 was in-charge of day-today administration of the Company. Also that, it is the submission of the Learned counsel for the Petitioner that the Respondent/Complainant admits that the Petitioner maintained proper accounts in his own handwriting from the amount collected from the general public and this would show that the Petitioner had properly maintained accounts and he had not taken any amount or maintained false records.

8.The Learned counsel for the Petitioner submits that the trial Court had wrongly held that it is well known to the Petitioner that the 'Returns' announced by the Company cannot be paid to the 'Depositors'. When once the Petitioner is not

a part of the administration and not a legally responsible person, then, he cannot determine whether the returns can be paid or cannot be paid.

9.The Learned counsel for the Petitioner proceeds to contend that the Petitioner is only a 'Branch In-charge' and there are many number of branches but cases were not registered against other Branch Managers and therefore, the act of the Respondent is a motivated and an unfair one, they includes collecting the deposits from the depositors, executing agreement between A1/Financial Establishment and the depositors, rearing and distribution of EMU birds to the depositors, supplying feeds and medicines to the depositors, paying monthly assured amount to the depositors and paying salary to the other staffs of A1/Financial Establishment and maintaining accounts for all transactions.

10.The Learned counsel for the Petitioner/A4 by referring to Section 5 of the TNPID Act contends that the said Section speaks of the following:

"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, ¹[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 lakh of rupees.

¹[5A.Compounding of offence.-(1)An offence punishable under Section 5 may, before the institution of the prosecution, be compounded by the Competent authority or after the institution of the prosecution, be compounded 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.

(2)Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken or continued against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith."

and in fact, the Petitioner/A4 is only a Branch Manager of A1/ Financial Establishment and he collects money and send it to the head office. Further, he is only an employee of A1/Financial Establishment. As such, the Petitioner/A4 as an 'Employee' of A1/Financial Establishment cannot be described as a person who is responsible for the managerial affairs of A1/Financial Establishment. Also, it is brought to the notice of this Court that A3/Lingasamy had expired and A2 and A4 are alive and A1 is the Financial Establishment.

11.The Learned counsel for the Petitioner/A4 in support of his contention stated that the Petitioner has an employee of A1/Financial Establishment cannot be prosecuted by the Respondent/Complainant by relying upon the order of this Court dated 04.08.2009 in CrI.R.C.No.591 of 2009 between Tmt.Prasannadevi V. State of Tamil Nadu rep. by Deputy Superintendent of Police, (Economic Offence Wing), Cuddalore, Cuddalore District, whereby and whereunder at paragraphs 11 to 15 it is observed and held as follows:

"11.In view of the above facts and circumstances, the court finds that even if the first information report does not disclose the exact role played by the accused, the accused can be charge-sheeted if the witnesses examined by the prosecuting agency come out with serious allegation disclosing commission of offence. It appears that the prosecuting agency come out with serious allegation disclosing commission of offence. It appears that the prosecuting agency, on the assumption that canvassing spree undertaken by the petitioner herein would amount to shouldering the responsibility of the management of the affairs of the firm, laid a charge sheet as against the petitioner also.

12.The fact remains that the petitioner was not a partner of the partnership firm charged in this case under section 5 of the TNPID Act. The only allegation levelled by the witnesses examined on the side of the prosecuting agency is that the petitioner canvassed for deposits for the financial institution. To invoke the penal provision under Section 5 of the TNPID Act, one should shoulder the responsibility of managing the affairs of the financial firm or company. I find that the provision under section 5 of the TNPID Act has been drafted very carefully. A person who merely manages the affairs of a firm or a company viz., Clerks, Accountants, Office Assistances, who are just paid servants

would not be responsible for the management in the sense that they are not answerable to the claim made against the financial firm. In other words, a person, who simply manages the affairs of a firm, cannot be said to have taken the responsibility of answering the allegation of mis-management of the affairs of the firm. The Clerks, Accountants and Office Assistants come under the said category. They have been given a role to manage the affairs of the partnership firm, but, they are not responsible for the mis-management of the firm when the same is under challenge by a third party. All the persons who manage the affairs of the financial institution need not necessarily be responsible for the management of the affairs of the institution. What is required under section 5 of the TNPID Act is that the person charged should have been responsible for the management of the affairs of the institution. The persons who simply manages the affairs of the financial institution as paid servant fall out the ambit and scope of the aforesaid provision of law.

13. The canvassing agents, as such, cannot be held responsible for the management of the affairs of the firm. A canvassing agent may contribute his mite by mobilising funds for the financial firm on contract basis for payment of brokerage or service charges. But, by no stretch of imagination, we can say that such a person shoulders the responsibility of the management of the affairs of the firm. A canvassing agent gives a rosy picture about the firm to mobilise the deposit. It is only the depositors who shall verify the veracity of such embellished version regarding the performance of a firm and the financial soundness thereof with the person who is responsible for the management of the firm and offer his deposit.

14. Sometimes, all family members, who have nothing to do with the financial bungling of the institution are roped in on the mere allegation that they started canvassing for deposit for the financial institution. Such a practice should be stopped forthwith as otherwise innocent victim just because they happened to be the relatives of the mis-managed financial institution would be roped

in and they have to undergo the ordeal of criminal trial.

15. In view of the above facts and circumstances, the Court having depreciated the practice of implicating the innocent relatives of the persons who are responsible for the management of the affairs of the firm, it is held that the clerks, accountants and office Assistants who are working in the financial institution as well as the canvassing agents shall not be prosecuted for the offence under Section 5 of the TNPID Act as they do not shoulder the responsibility for the management or mis-management of the affairs of the firm or company. The trial Court has improperly dismissed the plea of the petitioner for discharge on the ground that there are allegations in the statements recorded by the investigating agency from the witnesses that the petitioner did canvass for the deposit for the financial institution."

12. Continuing further, the Learned counsel for the Petitioner/A4 seeks in aid of the order of this Court dated 11.10.2011 in Crl.R.C.No.230 of 2012 between Gomathi V. State of Tamil Nadu rep. Deputy Superintendent of Police (Economic Offence Wing), Cuddalore, which would show that at paragraph 6, the order dated 04.08.2009 in Crl.R.C.No.591 of 2009 observations were mentioned and ultimately, the said Criminal Revision Petition was allowed.

13. The Learned Government Advocate (Crl. Side) forcefully submits that the Petitioner/A4 (as a Branch In-charge) is to account properly for the deposit amount collected by him from numerous depositors which runs to the tune of Rs.18,75,00,000/-.

14. The Learned Government Advocate emphatically projects an argument that the Petitioner/A4 as a 'Branch In-charge' had played an active role in the crime and there are enough oral and documentary evidence available on record to establish that the Petitioner/A4 had canvassed the 'Depositors', collected deposits from the 'Depositors', Issued 'Invoice Receipts' to them etc.

15. The Learned Government Advocate brings it to the notice of this Court that the Petitioner/A4 was termed as 'Branch Manager' was assigned with a role in the 'Business' and he had collected money and assured the 'Depositors' that money would be refunded but not acted as per his assurance. Moreover, he had taken part in the day-today activities of

A1/Financial Establishment along with A2.

16.The Learned Government Advocate (Crl. Side) for the Respondent/Prosecution submits that originally 310 Depositors had gone to the Court and after Section 173(8) Cr.P.C., report filed before the Competent Court, 712 victims filed complaints and as such, the impugned order dated 28.05.2015 in Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 passed by the Learned trial Court does not suffer from any legal infirmity.

17.It is to be noted that the Revision Petitioner/A4 had filed Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 on the file of the trial Court (under Section 227 Cr.P.C., seeking Discharge from the case).

18.It is to be borne in mind that the papers of investigation ought to be read by a Court of Law as they are. A Court of Law at the time of framing charge is only to consider the broad probabilities of the case and the total effect of the material collected by the prosecution as per decision Pradeep Kumar V. State [1994 (1) Crimes at page 552 (554) (Del.)]. pg1067

19.At the time of dealing with a Discharge Petition, there is no necessity for the Court to undertake a detailed enquiry with sifting and evaluating the materials nor it is necessary to go into numerous aspects. To put it succinctly, the truthfulness or otherwise of documents would not be assessed and determined at the initial stage of framing charge.

20.It cannot be gainsaid that at the time of framing charge, a 'Test of Prima-facie' is to be pressed into service. If there is ground for presuming that an Accused has committed an offence, then, a Court of Law is well within its ambit to frame necessary charges against him in accordance with Law. Even the probative value of material on record is not to be gone into and only the materials produced on record by the prosecution has to be accepted at that stage.

21.One cannot ignore a significant fact that even a very strong suspicion cemented upon materials before the concerned Court, which leads to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of the charges against an accused in respect of the commission of that offence as per decision of the Hon'ble Supreme Court in Superintendent & Remembrancer, Legal Affairs, W.B. V. Anil Kumar reported in AIR 1980 SC at page 52.

22.It is to be pertinently pointed out that without fully dealing with the materials on record, a Court of Law cannot

either as a matter of course or routine to adopt the prosecution decision, in the considered opinion of this Court. In a case instituted upon a police report, the Court is required at the time of framing of charges, to confine its attention to the documents mentioned in Section 173 Cr.P.C., only. Ordinarily, the documents filed by the defence cannot be considered in framing charge. In fact, the hearing provided to the accused under Section 227 Cr.P.C., is only in regard to the record of the case produced by the prosecution and the documents submitted therewith as per decision Ajay Kumar Parmar V. Rajan [AIR 2013 SC 633]. In short, there must be some material on record to frame charge against an 'Accused'. In reality, mere contradictions in the statement of accused persons recorded in terms of Sections of 161 and 164 Cr.P.C., cannot be characterised as absence of sufficient ground to frame charge as per decision Abdul Gani V. State of Orissa [2001 (CrLJ) NOC 120 (Ori)].

23. The responsibility of framing of the charges is the primary duty of the Court of Law and therefore, it has to apply its judicial thinking mind. Even the Court is not excepted to frame charge medically and in-depth appreciation of evidence is not permitted at the stage of framing of charge as opined by this Court.

24. Added further, the Court is not expected to go into the probative value of the materials on record, nor required to discuss every material placed before it by the police along with the charge sheet as per decision Rajendra Kumar Jain V. State of Rajasthan [2002 (CrLJ) at page 4243 (4248) (Raj)].

25. Besides the above, at the time of framing the charges, a Court of Law is to see on the basis of documents furnished by the prosecution whether a grave suspicion arises as regards the commission of an offence. The sifting of evidence at the time of framing charge is permissible only for a restricted purpose namely, to find out a prima-facie case. At that stage, it is not for the Court to determine whether a particular witness is unreliable. After all, due diligence ought to be taken even at the stage where charges framed is supported by an Ex-facie material evidence.

26. Equally, is that a charge should not be framed in a case where materials on record do not disclose the ingredients of the offence for which the Accused is charged.

27. In the instant case on hand, it is the stand of the Respondent that during investigation, the Petitioner/A4 had evaded the details of the whereabouts of the amounts collected from the general public, which has been entered into the Register maintained by him. Further, it is represented on the behalf of the Respondent that the complaints pointed out to

the fact that the Petitioner/A4 had involved himself in all the management and day-today affairs of the Company, namely, canvassing general public to deposit money in the name of A1 company, receiving the deposits, issuing receipts, executing agreement between A1 and the depositors, supplying feed to the Emu birds etc. Therefore, the case of the Respondent/Prosecution is that for the criminal act committed by the Petitioner/A4, he is not entitled to be discharged from the case as per Section 5 of the TNPID Act.

28. In the upshot of detailed qualitative and quantitative discussions and also, this Court, bearing in mind an important fact that as far as the present case is concerned, although the Petitioner/A4 is said to be a Branch Manager, there are enough materials to implicate him in the case (notwithstanding the fact that his name was not found in the First Information Report) and further, it cannot be ignored that the charge sheet was laid in the present case on 19.11.2012 for default of Rs.7,14,94,000/- to 310 depositors. In fact, the case was taken on file in C.C.No.16 of 2012 on 25.11.2012 and furthermore, when the Petitioner/A4 serving as a Branch Manager at Pollachi, had failed to account properly the whereabouts of the collected money, inasmuch as he had maintained the accounts in his own handwriting of A1/Financial Establishment, this Court comes to an irresistible and inescapable conclusion that there are enough materials in the form of records (through oral and documentary evidence) to bring home the role played by the Petitioner/A4. Viewed in that perspective, the Petition filed by the Revision Petitioner/A4 before the trial Court seeking to Discharge him from the case in C.C.No.16 of 2012 (Economic Offence Wing, Coimbatore in Cr.No.2 of 2012) is per se not maintainable. Looking at from any angle, the view taken by the trial Court, in dismissing the Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 dated 28.05.2015, in the considered opinion of this Court, does not suffer from any material irregularity or patent legal infirmity in the eye of Law. Consequently, the Criminal Revision Petition fails.

29. In fine, the Criminal Revision Petition is dismissed, thereby confirming the order passed by the Learned trial Court in Cr.M.P.No.1115 of 2013 in C.C.No.16 of 2012 dated 28.05.2015 for the reasons assigned in this Criminal Revision Petition. consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

To

1.The Special Court,
TNPID Cases, Coimbatore.

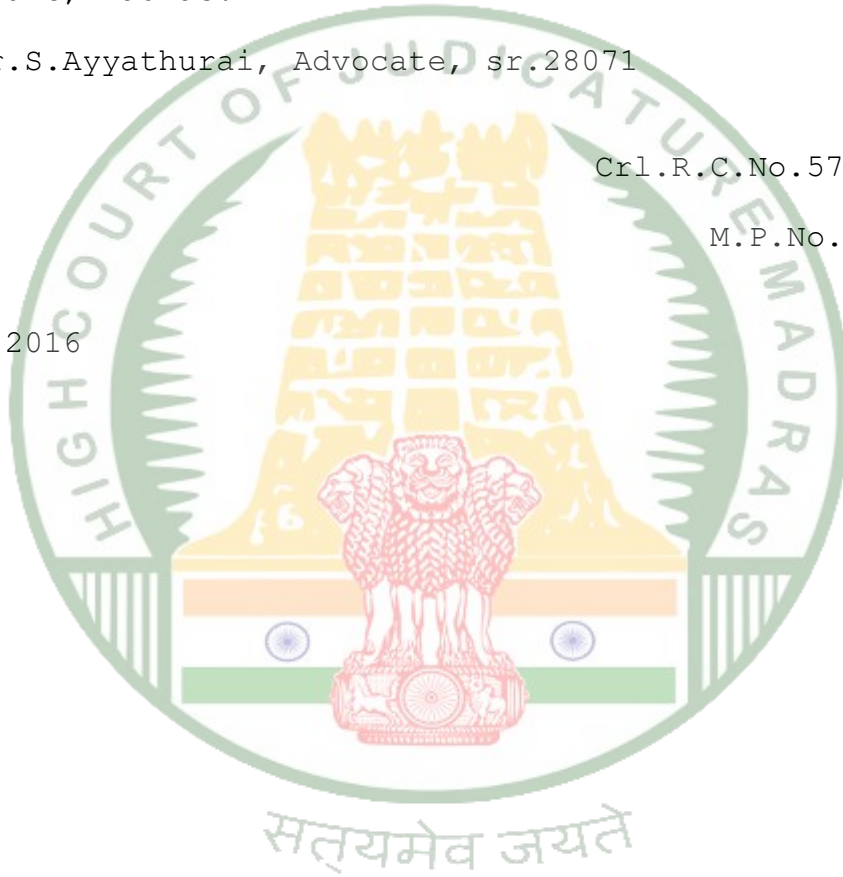
2.The Deputy Superintendent of Police,
Economic Offences Wing II,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.S.Ayyathurai, Advocate, sr.28071

Cr1.R.C.No.574 of 2015
and
M.P.No.1 of 2015

rsy co
kra 25.05.2016



WEB COPY