IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders Reserved on : 05.07.2016)

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.Nos.374 and 375 of 2008
and
M.P.Nos.1 and 1 of 2008

D.Ramagopal ... Petitioner in both Crl.R.Cs./Accused

Vs.

1. State by
   Inspector of Police,
   SHO, G-3, Kilpakkam Police Station,
   Chennai.

2. Padmanabhan
   LD. Assistant Public Prosecutor,
   II Metropolitan Magistrate Court,
   Egmore, Chennai - 600 008.

3. Director of Prosecution,
   Thamizh Naadu Slum Clearance Board Building,
   Kamarajar Saalai,
   Chennai. ... Respondents in Crl.R.C.No.374/2008

State by
Inspector of Police,
G-3, Kilpakkam Police Station,
Chennai. ... Respondent in Crl.R.C.No.375/2008

Prayer in both Crl.R.Cs.: Criminal Revision Cases filed under Sections 397 and 401 of the Code of Criminal Procedure, praying to set aside the order dated 21.02.2008 passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in M.P.Nos.410 and 469 of 2008 respectively in C.C.No.10224 of 2001.

In both Crl.R.Cs.

For Petitioner : Mr.Dr.A.E.Chelliah, Senior Counsel for M/s.C.Saifullah

For Respondents : Mr.M.Mohamed Riyaz, Government Advocate (Crl.Side)

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COMMON ORDER

Both the Criminal Revision Cases are directed against the order dated 21.02.2008 passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in M.P.Nos.410 and 469 of 2008 respectively in C.C.No.10224 of 2001, allowing the petition filed by the prosecution and dismissing the petition filed by the revision petitioner/accused.

2. It is admitted by both parties that on the basis of the complaint given by one Gandhimathy, a case was registered in Crime No.564 of 2000 and the prosecution has filed charge sheet in C.C.No.10224 of 2000 before the learned II Metropolitan Magistrate, Egmore, Chennai, against the revision petitioner/accused for the offences under Sections 409 and 420 IPC and Section 5 of Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act (hereinafter referred to as the TNPID Act) and the trial was in progress and during the pendency of the trial, the learned Assistant Public Prosecutor had filed a petition in M.P.No.469 of 2008 before the trial Court seeking to transfer the case to the Special Court constituted under the TNPID Act and at the time of filing the said petition, the learned Assistant Public Prosecutor has not filed any affidavit from his client. Hence, the petition filed by him without any affidavit is not maintainable.

3. In this case, the learned Senior Counsel appearing for the petitioner would mainly contend that since at the time of filing the petition, the learned Assistant Public Prosecutor has not filed any affidavit from his client, the said petition is not at all maintainable and the trial Court ought to have dismissed the petition filed by the prosecution. But, without considering the above fact, erroneously passed an order allowing the petition filed by the learned Assistant Public Prosecutor and hence, the order passed by the trial Court has to be set aside and both the criminal revision cases have to be allowed. The learned Senior Counsel appearing for the petitioner further contended that since the case is registered for the offences under Sections 409 and 420 IPC and also under Section 5 of the TNPID Act and charges were framed against the revision petitioner/accused by the trial Court for the offences under Sections 409 and 420 IPC and the case is pending for the past 15 years. Hence, the order of the trial Court has to be set aside and both the criminal revisions cases have to be allowed.

4. The learned Government Advocate (Crl.Side) would contend that the trial Court, after considering the entire facts and circumstances of the case, correctly passed order and there is no infirmity or illegality in the order passed by the trial Court and hence, he prayed that both the Criminal Revision Cases have to be dismissed.

5. This Court has considered the submissions made by the learned counsel on either side and perused the entire records.

6. It is useful to extract the charge sheet filed in this case which reads as follows:-

> ".... In the year 1996, the accused approached the complainant P.W.1 and introduced himself to sponsor as a candidate in his DRG Finance Investment that his finance company has been given interest 24% to the depositors. He promised to pay the amount in the matured dates. The P.W.1 sold her property for Rs.2.0 lakhs with the negotiation of with accused. On 22.7.1996 the P.W.1 deposited Rs.1,00,000/- for the fixed deposit in her name as a nominee her son Krishnamoorthy for the period of 2 years. On 18.10.97 in receipt No.403. She R.W.1 deposited Rs.1,00,000/- on fixed deposit for one year in her name (nominee by her son Krishnamoorthy) receipt No.010. Totally she deposited Rs.2,00,000/-. The both fixed deposits were matured on 21.7.98 and 17.10.98. The complainant approached the accused to remit her deposit amount. The accused did not remit the amount and he told her evasive replies. The accused presented 2 cheques bearing No.634370, 634371, Indian Overseas Bank, Oppanakara Street Branch, Coimbatore which were dishonoured.
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> So, the accused intentionally misappropriated the amount of Rs.2.0 lakhs to cheat the complainant. So, the accused is liable to punish under Sections 409 and 420 IPC r/w. 5 of Tamil Nadu Protection of Interests of Depositors Act, 1997."

7. On a perusal of the above charge sheet filed during the year 2000, it is seen that the de facto complainant had deposited the amount in the revision petitioner's finance company and to discharge the deposited amount, the revision petitioner/accused had issued two cheques and when the said cheques were presented for collection, they were dishonoured and hence, the charge sheet was filed for the offences under Sections 409 and 420 IPC and also under Section 5 of the TNPID Act. Except Section 5 of the TNPID Act, the case was taken by the learned II Metropolitan Magistrate, Egmore, Chennai, in C.C.No.10224 of 2001. But when the case is pending, after the examination of parties, the learned Assistant Public Prosecutor had filed the petition before the trial Court to transfer the case to the Special Court constituted under the TNPID Act. It is not denied on the side of the revision petitioner that the Special Court was constituted to try the cases under the TNPID Act and that Court is not competent to

try the offence under Section 5 of the TNPID Act. In this case, even according to the final report, the main allegation made by the de facto complainant is that for the amount deposited by the de facto complainant, the revision petitioner/accused issued two cheques and the same were dishonoured. In view of the above circumstances, the argument of the learned Senior Counsel for the petitioner that since the case was taken on file for the offences under Sections 409 and 420 IPC, that case cannot be tried by Special court or the Court cannot alter Section 5 of the TNPID Act is not at all correct. In this case, according to the settled principles of law, the Court can alter or frame charges during the course of trial. Further, the learned Assistant Public Prosecutors, appointed under Criminal Rules of practice, are entitled to conduct the prosecution on behalf of the State Government and they are not the Investigating officer.

8. In this case, it is useful to extract Sections 5 and 6 (3) of TNPID Act, which read 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 lakh of rupees.
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> 6. Special Court.- (1) ...
> (2) ...
> (3) Any pending case in any other Court to which the provisions of this Act apply shall stand transfered to the Special Court."

9. In view of the above provisions, any pending case which comes under the purview of Section 5 of the TNPID Act has to be transfered to the Special Court as per Section 6(3) of the TNPID Act. In this case, the case comes under the purview of the TNPID Act. Even at the stage of filing the final report, it was specifically mentioned by the Investigating Officer.

10. The learned Senior Counsel appearing for the petitioner argued that the learned Assistant Public Prosecutor has no power to file a petition without any affidavit from his client and hence, the petition filed by the learned Assistant

Public Prosecutor ought to have been dismissed by the trial Court. The learned Assistant Public Prosecutor drawn the attention of the Court to Section 6(3) of the TNPID Act which dealt with any pending case in any other Court to which the provisions of this Act apply shall stand transfered to the Special Court. In this case, the argument of the learned Senior Counsel appearing for the petitioner that the petition filed by the learned Assistant Public Prosecutor without any affidavit from his client is liable to be rejected. The learned Assistant Public Prosecutor has a bounden duty to mention about the provisions of the TNPID Act for which the petition filed by the learned Assistant Public Prosecutor is enough and it is not necessary to file affidavit from his party. The trial Court, after considering the entire facts and circumstances of the case, correctly allowed the petition filed by the learned Assistant Public Prosecutor and transferred the case to the Special Court constituted under the TNPID Act. In view of the above facts and circumstances of the case, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court and this Court finds no reason to interfere with the order of the trial Court and hence, both the criminal revision cases are liable to be dismissed.

11. In the result, both the Criminal Revision Cases are dismissed. Since the case is pending for long time, the learned II Metropolitan Magistrate, Egmore, Chennai, is directed to post the main case in C.C.No.10224 of 2001 on day-to-day basis and dispose the same, within a period of eight weeks from the date of receipt of a copy of this order, according to law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To
1. The II Metropolitan Magistrate, Egmore, Chennai.

2. The Director of Prosecution,
Thamizh Naadu Slum Clearance Board Building,
Kamarajar Saalai,Chennai.

3. The Inspector of Police,
G-3, Kilpakkam Police Station, Chennai.

+1 cc to Mr.C.Saifullah, advocate,sr.61253

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