IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08 .01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.30514 of 2015
and M.P.Nos.1 & 2 of 2015

Reserved on 05.01.2015

1. R.Seshagiri Rao

2. S.Deepa ... Petitioners/Accused 6 & 7

Vs

The State of Tamil Nadu,
rep. By the Deputy Superintendent of Police,
Economic Offence Wing II,
Coimbatore. ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and quash the charge sheet in C.C.No.15 of 2015 pending on the file of the Special Court under the Tamilnadu (Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Coimbatore.

For Petitioner : Mr.R.Chellappa
For Respondents : Mr.C.Emalias
Addl.Public Prosecutor

O R D E R

The present criminal original petition has been filed praying to call for the records in C.C.No.15 of 2015 pending on the file of the Special Court under the Tamilnadu (Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Coimbatore and quash the same.

2. The petitioners are arrayed as A6 and A7 in Crime No.4 of 2010 for alleged offences under Sections 120(B), 420, 506(ii) of IPC and Section 5 of the Tamil Nadu (Protection of Interest of Depositors in Financial Establishments) Act, 1997. A case in Crime No.12 of 2010 under Sections 3 and 4 of the Prize Chit and Money Circulation Scheme (Banning) Act, 1978 and 420 IPC was registered against the financial establishment, namely, "Keyes

Mercantile" and its partners Sasirekha and her husband C.Kalki on 26.2.2010 based on a complaint of one Baladhandayutham on the allegation that the accused collected deposits from him and defaulted to pay the assured returns. The said case was transferred to Economic Offences Wing-II Unit, Coimbatore and it was registered vide Crime No.4 of 2010 on the file of the respondent against A1 Keyes Mercantile, A2 Seshu Onfle Infotech Private Limited, A3 Sasirekha, A4 Kalki and A5 Sudarsan. The case of the prosecution is that A3 to A7 have colluded together and collected deposits from the general public in the names of A1 and A2 financial establishments by giving assurance of unrealizable returns from 50% to 100%. The accused have not done any profitable business out of the deposits. But they have paid the assured returns to the initial depositors from the deposit amounts of the later depositors and at one stage, after having collected sizeable amount from several members, the accused abruptly stopped paying assured returns and defaulted the deposit amounts to the depositors and absconded. As a result, 43 depositors have lodged their complaints for the total default amount of Rs.21,64,82,450/-. After investigation, a charge sheet has been filed before the Special Court under the Tamilnadu (Protection of Interest of Depositors (in Financial Establishments) Act, 1997, Coimbatore, which was taken on file vide C.C.No.15 of 2015. Now the petitioners/A5 and A6 have come forward with the present petition, praying to quash the proceedings as against them.

3. The learned counsel appearing for the petitioners would submit that the narration of events in the charge sheet forming part of the final report dated 24.2.2014 would reveal disputes of a civil nature and the crux of the case being refund of moneys deposited in the course of conduct of business admittedly carried on by a firm ostensibly. He would submit that in fact, the petitioners have honestly explained their position to the police authorities and no question of fraud or deceit will arise. He pointed out that there was no prima facie material to establish the role of the petitioners to connect them with the alleged crime and the charge against the petitioners is baseless and liable to be quashed.

4. The respondent has filed a detailed counter, stating that these petitioners have canvassed the public and collected investments from the public under the pretext of doing Forex Trading by giving an assurance that 50% to 100% of the amount invested would be returned to the investors every month and the principal amount would be returned after three months which is abnormal amounts when compared to the bank procedure. During the course of investigation, it was found that A7 purchased the property out of the depositors' money worth about Rs.2 crores in her name. A6 and A7 have utilized the public money and purchased the property in their names and later, they executed

power deed in favour of one Dhanasekaran, who sold the property to one Suresh and therefore, it is incorrect to state that the matter is in civil nature. Thus, the respondent sought for dismissal of the petition.

5. Heard the learned counsel for the petitioner and the learned Addl.Public Prosecutor and perused the entire materials available on record.

6. The specific case of the prosecution against the petitioners A6 and A7 is that they have canvassed the public and collected investments from them under the pretext of doing Forex Trading by giving an assurance that 50% to 100% of the amount invested would be returned to the investors every month and the principal amount would be returned after three months which is abnormal amounts when compared to the bank procedure. It is also alleged against them that they have utilized the public money to purchase the landed property in their names. Therefore, the allegations made against the petitioners would prima facie disclose the essential ingredients of the offences registered against them.

7. It is settled law that the powers possessed by the High Court under Section 482 of the Code are wide and the very plenitude, require a great caution in its exercise. Power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases. In "Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others" reported in (1976) 3 SCC 736, the Hon'ble Supreme Court has enunciated the circumstances under which the process against the accused can be quashed or set aside, which read as under :

> "(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
>
> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

8. On a perusal of the entire material available on record and taking into consideration the role of the petitioners in canvassing and collecting the deposits from the public, I do not find that the present case would not fall within any of the above factors envisaged by the Hon'ble Supreme Court, so as to invoke inherent jurisdiction of this Court to quash the proceedings. The contentions raised by the learned counsel for the petitioners may be taken as defence during the course of trial and certainly, will not serve as a ground to quash the proceedings.

Accordingly, the present Criminal Original Petition is dismissed. Consequently, connected MPs are closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Deputy Superintendent of Police,
   Economic Offence Wing II,
   Coimbatore.

2. The Public Prosecutor,
   High court, Madras.

+ 1 cc to Mr.R.Chellappa, Advocate SR 1500

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