

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.11.2017

CORAM

THE HONOURABLE MR. JUSTICE **P.N. PRAKASH**

Crl.O.P.No.9525 of 2016
in Crl.A.No.SR.16279 of 2013

S.A.Edward

.... Petitioner

Vs

1.V.Thirunavukkarasu

2.The Competent Authority-cum-
Collector of Chennai,
Chennai.

.... Respondents

Petition filed under Section 5 of Limitation Act to condone the delay of 90 days in filing the above appeal against the judgment dated 28.11.2012 passed in Crl.M.P.No.1313 of 2012 in C.C.No.11 of 2000 of the learned Special Judge, TNPID Act, Chennai.

For Petitioner : Mr.A.R.Nixon

For Respondent : No Appearance

ORDER

This petition has been filed to condone the delay of 90 days in filing the appeal against the judgment dated 28.11.2012 passed in Crl.M.P.No.1313 of 2012 in C.C.No.11 of 2000 of the learned Special Judge, TNPID Act, Chennai.

2. One Thirunavukkarasu was running a financial establishment and had collected deposits from various persons. Edward, the petitioner herein and his family members had deposited an amount to the tune of Rs.70,000/- between 12.12.1996 and 08.05.1997 with Thirunavukkarasu. When the deposit matured, the said Edward approached Thirunavukkarasu for return of the deposit amount, for which, Thirunavukkarasu agreed to transfer a land in favour of Edward. While so, Thirunavukkarasu committed default in respect of similarly placed depositors.

3. On the complaint of one such depositor by name Bhagyalakshmi, a case in Cr.No.158 of 1998 was registered against Thirunavukkarasu for the offence under Section 5 of the TNPID Act. Thereafter, the police recorded the statements of other depositors to whom Thirunavukkarasu had to refund the deposit amounts. After completing the investigation, the Police filed a charge sheet in C.C.No.11 of 2000 before the Special Court for TNPID Act cases, Chennai against Thirunavukkarasu for 230 counts, which included the deposit amount of Edward also.

4. Thirunavukkarasu came forward to deposit the entire money with the competent authority for disbursement to the depositors and accordingly, he deposited the amount and filed CrI.M.P.No.1313 of 2012 in C.C.No.11 of 2000 under Section 5(A) (ii) of the TNPID Act for compounding the offence.

Except Edward, other depositors agreed for compounding the offence and they collected their shares of money. However, Edward contended that he will not accept the amount since Thirunavukkarasu had agreed for transfer of land in his favour.

5.The Special Court for TNPID, by order dated 28.11.2012 in CrI.M.P.No.1313 of 2012 in C.C.No.11 of 2000, permitted the compounding of the offence with the depositors and acquitted Thirunavukkarasu. However, in the order dated 28.11.2012, the Special Court, has held as follows:

"One of the depositor namely Mr.Edward claim land in lieu of the deposit amount. In the TNPID Act 5A categorically says "On payment of the entire amount due to the depositors with or without interest to be paid. There is no alternative relief given in the said provision. Under these circumstances, the Edward claim not sustainable in law. In this case entire amount has been deposited by the accused/financial establishment. On this basis only the Competent Authority took up the matter and compound the offence in respect of 230 counts (1 count repeated) (229 counts). In respect of 22 counts, the 21 depositors refused to receive the amount. A proper reason also has stated in the order passed by the Competent Authority. The amount deposited by the accused to be paid to the Government account. Hence, all the counts can be compounded."

Aggrieved by the order of acquittal passed by the trial Court, Edward has filed Criminal Appeal against the acquittal with a delay of 90 days.

6.Mr.A.R.Nixon, learned counsel for Edward submitted that Thirunavukkarasu, having promised to transfer the land has gone back upon the promise and has also filed a false affidavit in the TNPID Court Court that he had transferred the land, but, actually, he had not done so.

7.The learned counsel for Edward also brought to the notice of this Court the agreement for sale dated 06.12.2003 that has been entered into between Thirunavukkarasu and Edward during the pendency of the prosecution.

8.This Court gave its anxious consideration to the rival submissions.

9.Under the TNPID Act, neither the Court nor the competent authority can insist upon the accused to transfer immovable properties in lieu of return of the deposited amount and therefore, the trial Court was right in not accepting Edward's plea. This Court also does not find any infirmity in the order dated 28.11.2012 passed by the trial Court acquitting Thirunavukkarasu by accepting his compounding application.

10. In such view of the matter, this Court is not inclined to condone the delay in filing of the appeal against the acquittal and accordingly, this petition is dismissed. However, it is always open to Edward to work out his remedy in accordance with law and also as per the agreement dated 06.12.2013.

With the above observation, this Criminal Appeal is dismissed at the SR stage itself.

03.11.2017

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Copy to

The Special Judge,
TNPID Act,
Chennai.

P.N. PRAKASH,J.,

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