IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Criminal Appeal No.737 of 2017

P. Thani Arasu .... Appellant

Vs

1. The Oriental Benefit and Deposit Society Ltd.,
   108, Audiappa Naicken Street,
   Chennai – 600 079

2. G.H. Krishnakumar (President),
   108, Audiappa Naicken Street,
   Chennai – 600 079

3. K.M. Gopakumar (Director),
   108, Audiappa Naicken Street,
   Chennai – 600 079

4. The Deputy Superintendent of Police,
   E.O.W.II, Anna Nagar,
   Chennai – 600 040

5. The Competent Authority/D.R.O,
   Chennai ... Respondents

Appeal filed under Section 11 of TANPID Act against the order dated 10.04.2015 passed in Crl.M.P.No.2317/2014 on the file of learned Special Judge (TANPID), Chennai.

For Appellant	:	Mr.P. Chandrasekaran
For R.1 to R.3	:	Mr.D. Suresh
For R.4 & R.5	:	Mr.Emalias Public Prosecutor assisted by Mr.K. Madhan

JUDGMENT

On the direction of this Court Tmt.Lalitha Lakshmi, Superintendent of Police, E.O.W II, Chennai is present today and P.Thani Arasu, the appellant herein is also present.

2. This appeal has been filed under Sec.11 of TANPID Act.

3. For the sake of convenience, the parties may be referred to by their name.

4. The Oriental Benefit and Deposit Society Limited was a financial establishment, in which, G.H. Krishnakumar and K.M. Gopakumar were President and Director respectively. The Oriental benefit and Deposit Society Limited had collected deposits and also had given loans to various persons. Since the said Society defaulted in refund of deposit, one C. Janarthanan gave a complaint,

based on which, the respondent police registered a case in Cr.No.12/2005 on 14.02.2005 under Sec.5 of TNPID Act against Oriental Benefit and Deposit Society Limited and its office bearers and Directors. Some of the Directors were arrested and some of them were enlarged on anticipatory bail.

5. It is the case of the police that a total sum of Rs.14,36,43,605/- have to be refunded to various depositors by the Society. Admittedly, P. Thani Arasu, the appellant herein, had taken a loan of Rs.1,00,000/- from the Society on 01.11.1995 under loan Account No.111 H 134 after mortgaging the original documents of his property in Vadapalani. P. Thani Arasu did not discharge the loan and therefore, he was not able to get back the original title deeds of his property. While so, the Society ran into rough weather and as stated above, the case was registered in Cr.No.12 of 2005 against the Society and the police took over the affairs of the Society. The competent authority to administer the assets of the Society is the District Revenue Officer, Chennai under the TNPID Act. P. Thani Arasu filed a petition in CMP No.2317 of 2014 in Cr.No.12 of 2005 before the Special Court under TNPID Act, Chennai to get back the original title deed of his property by contending that he had paid a sum of Rs.80,465/- and that he is willing pay some reasonable amount as one

time settlement as per the orders of the Special Court.

6. The Director of the Society filed a detailed counter alleging that P. Thani Arasu had taken a mortgage loan of Rs.1,00,000/- on 01.11.1995 on an interest of 21.6% per year and that he was required to pay Rs.2,200/-per month as EMI for 96 months. He did not regularly pay the E.M.I, on account of which, interest had to be calculated for the defaulted amount also in terms of the agreement. They have also stated that whenever the Society took steps to bring his property for sale, he would pay some small amount and get the auction stopped. According to the Society, P. Thani Arasu has to pay a sum of Rs.4,88,620/- and only then, the mortgage loan can be discharged.

7. Mr. R. Rudrasekar, Dy. Superintendent of Police filed a counter affidavit in Crl.M.P.No.2317 of 2014 before the Special Court under TNPID Act stating that it would be sufficient if Rs.50,790.35 is paid by P. Thani Arasu to the Society for discharging the loan. The Special Judge for TNPID cases, by a well considered order dated 10.04.2015 in Crl.M.P.No.2317 of 2014 in Cr.No.12/2005, rejected the stand taken by the police and held that P. Thani Arasu has to pay a sum of Rs.4,88,620/- and only then, the mortgage loan can be discharged. Aggrieved by the order, P. Thani Arasu has filed the

present appeal.

8. Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the materials available on record.

9. This Court was indeed surprised to note the stand taken by the respondent police before TNPID Court that P. Thani Arasu needs to pay only a sum of Rs.50,790.35, but, whereas the Society was claiming from him Rs.4,88,620/-. Therefore, this Court directed the Superintendent of Police, E.O.W to enquire into this aspect and file a status report. The Superintendent of Police and the Dy. Superintendent of Police are present before this Court. The Deputy Superintendent of Police has filed counter affidavit, wherein, paragraph No.6, he has stated as follows:

> *"6. It is submitted that Respondent 4 the then DSP Tr.Rudrasekar (Retd) has filed Counter in Crl.M.P.No.2317/14 before the Hon'ble Spl.Judge TNPID Court, Chennai on 13.11.2014. Respondent 4 has miserably failed to calculate the rate of interest of the Loan borrowed by the petitioner /Thani Arasu. The 4th respondent inadvertently, wrongly and without any basis calculated the rate of*

interest of the loan and filed the counter without the knowledge of the Superior Officers."

10. Thus the police have owned their mistake and the learned Public Prosecutor submits that Mr.Rudrasekar, Dy. Superintendent of Police has retired from service and prior to his retirement he has filed such counter affidavit before TNPID Court. The explanation offered by the police is accepted.

11. Now coming to the facts of the case, it is common knowledge that only if the borrowers return the borrowed amount, the financial establishment can repay to the depositors. Therefore, borrowers cannot be treated with kid glove. The borrowers cannot take advantage of the fact that the financial establishment has run into trouble and take that as an opportunity to avoid repayment because that will ultimately affect the interest of the depositors.

12. In this case, a total sum of Rs.14,36,43,605/- is due to the depositors. The trial Court has calculated the interest payable by P. Thani Arasu in accordance with the terms of the loan agreement, which itself comes to Rs.4,88,620/-. Therefore, this Court does not find any serious infirmity in the order passed by the Special Court

under TNPID Cases. However, Mr.P. Chandrasekaran, learned counsel appearing for the appellant submitted that P. Thani Arasu is very poor and that he may not be able to pay such a huge amount for discharging the loan and that he requires the property documents without which, his family will be put to untold hardship after his demise.

13. The fact remains that the police have not completed the investigation though the case has been registered in the year 2005 and that, the agony of P. Thani Arasu cannot be extended ad infinitum.

14. In such circumstances, this Court is of the view that it will be in the interest of justice if an amount of Rs.4,88,620/- is reduced to Rs.3,50,000/-.

15. Mr.P. Chandrasekaran, learned counsel for the appellant submitted that admittedly the appellant has already paid a sum of Rs.80,465/- and that may be given credit to.

16. On a reading of the trial Court order, this amount has been given credit to and only thereafter, the amount payable has been fixed as Rs.4,88,620/-.Therefore, there cannot be a further reduction in the

amount of Rs.3,50,000/- fixed by this Court supra.

17. However, taking into consideration the facts and circumstances of the case, the appellant is directed to deposit a sum of Rs.3,50,000/-(Rupees three lakhs fifty thousand only) within three months from the date of receipt of a copy of this Order.

18. In fine, the appellant is directed to deposit a sum of Rs.3,50,000/-(Rupees three lakhs fifty thousand only) by way of Demand Draft drawn in favour of The Competent Authority/D.R.O, Chennai to the credit of Cr.No.12/2015 on or before 31.03.2018. On such deposit being made, the mortgage shall be cancelled and the original documents shall be returned to P. Thani Arasu. With the above direction, the appeal is disposed of.

04-12-2017

sr

Speaking Order/Non-Speaking Order

Index:yes/no

website:yes

To

1. The Special Court under TNPID Act, Chennai
2. The Public Prosecutor, High Court, Madras

P.N. PRAKASH,J.,

sr

Crl.A.No.737 of 2017

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