IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.05.2017
CORAM
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.R.C.No.413 of 2015

and

M.P.No.1 of 2015

V.S.Shanthi … Petitioner

Vs.

The Deputy Superintendent of Police,
Economic Offence Wing-II,
Vellore, Vellore District.
(Crime No.3 /2007) … Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure Code to call for the entire records in connection with Crl.M.P.No.1241/2013 in C.C.No.3/2012 on the file of the learned Special Judge, under TNPID Act, Chennai and set aside the order dated 20.02.2015.

For Petitioner : Mr. H.Rajasekar
For respondent : Mr.R.Ravichandran, Government Advocate (Crl.side)

O R D E R

The present Criminal Revision has been filed challenging the order of dismissing the petition filed by the petitioner under Section 239 Cr.P.C. to discharge her from the criminal case.

2. The petitioner is an accused in a criminal case in C.C.No.3 of 2012 on the file of the Special Court under TNPID Act for the offences under Section 5 of the TNPID Act and Sections 420, 406 r/w.120(b) IPC. Totally there were 25 accused and the petitioner has been arrayed as A25. He filed an application before the Court below seeking to discharge him from

the above criminal case and the Court below dismissed the said application. Challenging the same, the present revision has been filed.

3. The case of the prosecution is as follows:-

A1 to A3 in the instant case are the Financial Establishments, out of which, A1 and A3 are partnership firms; A2 is a company registered under the Companies Act; and A4 to A25 canvassed and collected deposits from general public on various dates, but they failed to return the deposit amounts with interest. In the above circumstances, one Mullaikodi, lodged a complaint against the accused before the Additional Director General of Police, EOW-II, Vellore and based on the above said complaint, EOW-II, Vellore registered a case in Crime No. 3 of 2007 for the offences under Section 5 of the TNPID Act and Section 420 IPC. During investigation, it was found that A4 to A25 collected deposits in the name of A1 company from 184 depositors to a total sum of Rs.8,03,19,400/-, but defaulted to satisfy with interest to a sum of Rs.1,92,19,898 and total defalcation comes to a sum of Rs.9,95,39,298/-. They have also collected deposits in the name of A2 company from 176 depositors, totalling a sum of Rs.2,69,17,000/- and failed to repay with interest accrued for a sum of Rs.1,68,21,099/- and they committed default to the tune of Rs.4,37,38,099/-. Apart from that, A4 to A25 also collected deposits in the name of A3 firm from 120 depositors , totalling to Rs.1,78,48,500/- and the interest accrued thereon would workout to Rs.43,34,385/- and that they failed to settle the dues to the depositors to a total sum of Rs.2,21,82,885/-. In all, A4 to A25 collected deposits from various investors to the tune of Rs.12,50,84,900/- and the interest accrued thereon is worked to Rs.4,03,75,382/-. Thus, they cheated the depositors for Rs.16,54,60,282/-.

4. After investigation, the respondent filed final report for the above said offence. The Court below has taken cognizance of the offences in C.C.No.3 of 2012. Thereafter, the petitioner filed an application under Section 239 Cr.P.C seeking to discharge him from the above criminal case on the ground that he was not responsible for the day to day affairs of the company.

5. The Court below while dismissing the application held that the deposits were collected from the general public and that there are prima facie materials available on record to show that the petitioner also canvassed and collected deposits from the depositors and that the petitioner was also involved in the collection of deposits.

6. Challenging the above order, the petitioner has filed the present revision before this Court.

7. The learned counsel for the petitioner would submit that the petitioner is neither a partner nor an employee of A1 to A3 Financial Establishments. She is only friend of A13, who is the son of A4, who are the partners in the above financial establishments and she has only signed some of the blank promissory notes as a witness and she never involved in collection of deposits or she is responsible for the management of the financial establishments. Merely because the petitioner attested some of the pronotes, she has been implicated as an accused.

8. Per contra, the learned Government Advocate (Crl. side) would submit that even though the petitioner is not a partner or employee of the company, she had signed in number of pro-notes issued by the accused financial establishment and there are materials available on record to show that the petitioner also canvassed deposits for the financial institution.

9. I have considered the rival submissions and also perused the materials available on records carefully.

10. Admittedly, the petitioner is neither a partner nor an employee of the accused financial institution and it is also admitted that the petitioner had only attested some of the pronotes issued by the accused financial institution. Apart from that there is no allegation against the petitioner that she collected deposits for the institution. Thus, this court finds no material on record to show that the petitioner had participated in the day to day management of the affairs of the accused financial institution and that she has been roped in as an accused merely on the ground that she had also acknowledged the deposits received by the financial institution and she had also attested some of the pronotes.

11. In a similar situation, this Court had an occasion to deal with the same set of facts in 2010 (1) MLJ (Criminal) 742 (Prasannadevi /vs/ State of Tamilnadu) wherein this Court has held as follows:

> "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."

12. In yet another judgment reported in 2013 (2) Law Weekly (Criminal) 212(Aruna & others /vs/ State of Tamilnadu and others) this Court has held as follows:

" In the present case, it is evident that the family members, who have nothing to do with the financial bungling of the institution, are roped in on the mere allegation that they canvassed for deposit for the financial institution. such a practice should be stopped forthwith as otherwise innocent victims just because they happened to be relatives of the mis-managed financial institution would be roped in and they have to undergo the ordeal of criminal trial."

13. Merely because the petitioner had attested some of the pronotes without knowing the implication there of, it cannot be said that he committed the crime and he cannot be roped in without any further material to show that he had intention to cheat the depositors.

14.In the above circumstances, I am of the considered view that there is no primafacie material available on record against the petitioner to proceed further. Hence, the petitioner is entitled for discharge from the charges. But the Court below erred considering the materials available on record in a proper perspective and dismissed the application. In the light of the above discussion, the order of the Court below is liable to be interfered with.

15. In the result, the Criminal Revision Case is allowed and the order of the Court below is set aside and the petitioner is discharged from all the charges. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp

To

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

+2 ccs to M/s.H.Rajasekar Advocate sr 37444

Crl.R.C.No.413 of 2015

ad(co)
aa05/12/2017