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

CRL.R.C.No.481 of 2015

and

M.P.No.1 of 2015

Vanaja
… 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.436/2013 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. D.Dayalan
For respondent : Mr.R.Ravichandran,
Government Advocate (Crl.side)

O R D E R

The present Criminal Revision has been filed challenging the order dated 20.02.2015 dismissing the discharge petition filed by the petitioner under Section 239 Cr.P.C.

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 A17. 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 the married sister of A4 and she is not a partner in any of the financial institution and the only allegation against her is that she has canvassed and collected deposits from the depositors and merely because, she is the sister of A4, she has been implicated. Now she is married and living elsewhere and she is no way connected with the affairs of the financial institution and she never involved in the collection of deposits.

8. Per contra, the learned Government Advocate (Crl. side) would submit that even though the petitioner is neither a partner nor an employee of the company, 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 she is only a married sister of A4 and she is living separately. The only allegation against her is that she had collected deposits for the institutions. 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 is the sister of A4.

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 is married sister of A4, she cannot be roped in without any material to show that she 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.

+1 cc to M/s.D.Dayalan Advocate sr 37477

Crl.R.C.No.481 of 2015

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