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

CRL.R.C.No.482 of 2015

and

M.P.No.1 of 2015

M.L.S.Vijay Kumar … 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.437/2013 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 of dismissing the petition filed by the petitioner under Section 239 Cr.P.C. to discharge him 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 are 25 accused and the petitioner was arrayed as A20. Earlier the petitioner herein filed an application before the Court below 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 firm and 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 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 repayment 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 total sum 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 a sum of Rs.1,78,48,500/- and the interest accrued would comes to Rs.43,34,385/- and they totally committed default in payment for a sum of Rs.2,21,82,885/-. In total, A4 to A25 collected a total sum of Rs.12,50,84,900/- and the accrued interest of Rs.4,03,75,382/- and they defaulted the total sum of Rs.16,54,60,282/-.

4. The petitioner herein is one of the partners in the A2 company and he is also jointly responsible for the management of the affairs of the financial establishments and has also collected deposits from the depositors.

5. After investigation, the respondent also filed a final report and for the above said offence, the Court below has also taken cognizance of the case in C.C.No.3 of 2012. Thereafter, the petitioner filed an application under Section 239 Cr.P.C to discharge him from the above criminal case on the ground that the petitioner is not the partner of the A2 company at the time of registering the complaint and he was a director of the company only from the year 1996 to 1999. Thereafter, he resigned from the post and he is not responsible for the management of the Financial Establishments and affairs of the company.

6. The Court below dismissing the application held that

he was one of the directors of A2 company from the year 1996 to 1999 and the deposits were collected from the general public and there are also prima facie material available on record to show that the petitioner also canvassed and collected deposits from the depositors. 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 was only a director of the company from the year 1996 to 1999 and he was not in charge or responsible for the affairs of the company. Moreover, the case was filed only in the year 2007 and at that time he was not the director of the company. Hence, he cannot be connected with the criminal liability and apart from that there is no material available on record to show that the petitioner was also involved in collecting the deposits.

8. Per contra, the learned Government Advocate (Crl. side) would submit that the petitioner is one of the directors of the A2 company during the period of the deposits from the public and there are material available on record in the form of the complaint as well as the statement of the witness under Section 161 Cr.P.C and prima facie materials show that the petitioner also canvassed and collected deposits from the depositors and the Court below considering all the materials, dismissed the petition filed by the petitioner and there is no reason to interfere with the well considered order of the Court below.

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

10. Admittedly, the petitioner is one of the directors of the company from the year 1996 to 1999 and during the relevant period the deposits were collected from the depositors and the question is whether there are any materials available on record prima facie to show that the petitioner also canvassed and collected deposits.

11. Since there are prima facie materials available on record to show that the petitioner also canvassed and collected deposits from the depositors and the Court below considering the entire materials, came to a conclusion that there is prima facie material available on record, the question whether the petitioner is actually in charge of the company or responsible for the company cannot be decided at this stage and it is always open to the petitioner to let in evidence to prove the same. In the above circumstances, I find no merits in the criminal revision case.

12. In the result, the Criminal Revision Case is dismissed. 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 37510

Crl.R.C.No.482 of 2015

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