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

CRL.R.C.No.484 of 2015

and

M.P.No.1 of 2015

1. T.S.Kannaiyan

2. K.Vinoth Kumar … Petitioners

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.763/2013 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 Petitioners : 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 petitioners under Section 239 Cr.P.C. to discharge them from the criminal case.

2. The petitioners are 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 petitioners were arrayed as A4 & A13. Earlier the petitioners herein filed an application before the Court below to discharge them 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 come 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 second petitioner is the son of the first petitioner and they are the managing partners of A1 to A3 financial establishments and they are also jointly responsible for the management of the affairs of the Financial Establishments and 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 petitioners filed an application under Section 239 Cr.P.C to discharge them from the above criminal case on the ground that they are not responsible for the affairs of the company.

6. The Court below dismissing the application held that they were managing partners of A1 to A3 Financial Establishments and the deposits were collected from the general public and there are also materials available on record to show that the petitioners also canvassed and collected deposits from the depositors and there are primafacie materials available on

record to show that the petitioners are also involved in collection of deposits. Challenging the above order, the petitioners had filed the present revision before this Court.

7. The learned counsel for the petitioners would submit that there is no material available on record to show that the petitioners were also involved in collecting the deposits.

8. Per contra, the learned Government Advocate (Crl. side) would submit that the petitioners are partners of the A1 to A3 company and there are materials available on record in the form of the complaint as well as the statement of the witness under Section 161 Cr.P.C and primafacie materials show that the petitioners also canvassed and collected deposits from the depositors and the Court below considering all the materials, dismissed the petition filed by the petitioners 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 petitioners are the managing partners of A1 to A3 company and 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 petitioners also canvassed and collected deposits.

11. Since there are primafacie material available on record to show that the petitioners also canvassed and collected deposits from the depositors and the Court below considering the entire materials, came to a conclusion that there is a prima facie material available on record, the question whether the petitioners are actually in charge of the company or responsible of the company cannot be decided at this stage and it is always open to the petitioners 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 37508

Crl.R.C.No.484 of 2015

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