IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 11.09.2017)

(Pronounced on : 15.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.185 of 2013
and
Crl.R.C.No.1503 of 2012

In Crl.R.C.No.185/2013:

K.A.Gunasekaran ... Petitioner/De facto Complainant

.. Vs ..

1. The State by Inspector of Police,
   Economic Offence Wing II,
   Vellore District. ... 1st Respondent/Complainant
2. R.Kulasekaran @ R.R.Naveen Babu
3. R.Sujatha
4. R.Geetha ... Respondents 2 to 4/Accused 5 to 7

In Crl.R.C.No.1503/2012:

S.Ravikumar ... Petitioner/Accused No.8

.. Vs ..

1. The State by Inspector of Police,
   Economic Offence Wing II,
   Vellore District. ... 1st Respondent/Complainant
2. K.A.Gunasekaran ... 2nd Respondent

(R-2 impleaded as per the order of this Court dated 29.01.2013 in M.P.No.1 of 2013)

Prayer in Crl.R.C.No.185/2013.: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the order in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009 on the file of the Special Judge under TNPID Act, Chennai - 600 104 dated 12.10.2012 allowing the discharge petition filed by the respondents 2 to 4.

Prayer in Crl.R.C.No.1503/2012.: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the order in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009 on the file of the Special Judge under TNPID Act, Chennai - 600 104 dated 12.10.2012 dismissing the discharge petition filed by the petitioner.

In Crl.R.C.No.185/2013

For Petitioner : Mr.J.Saravana Vel

For R-1 : Mr.R.Ravichandran, Government Advocate (Crl.Side)

For RR-2 : Mr.S.Haroon Alrasheed for M/s. T.S.Gopalan & Co

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In Crl.R.C.No.1503/2012

For Petitioner : Mr.S.Haroon Alrasheed for M/s. T.S.Gopalan & Co

For R-1 : Mr.R.Ravichandran, Government Advocate (Crl.Side)

For R-2 : Mr.J.Saravana Vel

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COMMON ORDER

Crl.R.C.No.185 of 2013 is filed by the de facto complainant against the order dated 12.10.2012 passed by the learned Special Judge under TNPID Act, Chennai, in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009, allowing the discharge petition filed under Section 239 of Cr.P.C. and discharging the accused Nos.5 to 7 from the charges under Sections 4, 11, 22(1) r/w. 76(1) of Chit Fund Act, 1982 and Section 420 IPC and Section 5 of TNPID Act.

2. Crl.R.C.No.1503 of 2012 is filed by accused No.8 against the order dated 12.10.2012 passed by the learned Special Judge under TNPID Act, Chennai, in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009, dismissing the discharge petition filed by the revision petitioner/A.8.

3. Both the criminal revision cases are arising from the common order dated 12.10.2012 passed in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009, both the matters are taken together and common order is passed.

4. Learned counsel appearing for the petitioner in Crl.R.C.No.185 of 2013/De facto complainant would contend that Crl.M.P.No.515 of 2012 was filed by accused Nos.5 to 8 seeking

to discharge them from the criminal proceedings and the learned Special Judge under TNPID Act, Chennai, had allowed the petition in respect of accused Nos.5 to 7 and rejected the petition in respect of A.8. The learned counsel for the petitioner further contended that though accused Nos.5 to 7 are the partners in such a capacity, they are liable to be prosecuted and hence, he seeks to set aside the order passed by the learned trial Judge in allowing the discharge petition filed by A.5 to A.7.

5. Learned counsel appearing for the 8th accused/petitioner in Crl.R.C.No.1503 of 2012 would submit that the 8th accused namely S.Ravikumar along with accused Nos.5 to 7 have filed a petition under Section 239 of Cr.P.C. in Crl.M.P.No.515 of 2012 before the learned Special Judge under TNPID Act, Chennai, seeking to discharge them from the charges in C.C.No.9 of 2009 and the said petition was dismissed only in respect of the 8th accused. The learned counsel for the revision petitioner/A.8 has drawn the attention of this Court to various statements given by the depositors and contended that there is no sufficient material available on record to frame charges against the revision petitioner/A.8 and hence, he seeks to allow the criminal revision case No.1503 of 2012 and to set aside the order passed by the learned trial Judge in dismissing the discharge petition filed by A.8.

6. Learned Government Advocate (Crl.Side) appearing for the first respondent State has placed material facts and filed all the documents along with the final report filed by the first respondent Inspector of Police, Economic Offence Wing-II, Vellore District.

7. Points for determination are

(i) Whether the order of the trial Court in discharging accused Nos.5 to 7 is sustainable in law?
(ii) Whether the order of rejection of refusal to discharge A.8 is sustainable in law?
(iii) To what other relief?

8. This Court has considered the submissions made by the learned counsel on either side and perused the final report filed along with the statements of witnesses.

9. On a perusal of records, it is seen that A.1 Lakshmi Chit Fund Corporation was registered in the year 1994 and A.2 Padmavathy Chit Fund Private Ltd., was registered in the year 1995. A.5 is the partner of A.2 establishment. As per the prosecution case, A.5 to A.8 and other partners were canvassing the public to make deposit in the said Chit Funds and they had collected deposit amount from 52 depositors to the tune of

Rs.16,80,269.50 in A.1 Chit Fund and Rs.6,62,291/- in A.2 Chit Fund. Totally, they have cheated and defaulted a sum of Rs.23,42,560.50. Accused Nos.5 to 8 were actively participated in the day-to-day affairs of the financial establishment and all the accused are family members and all of them with fraudulent intention, received the deposit amounts and authorised one Mr.Ramasamy, Managing Director of the Chit Funds to deal with all the transactions. A.5 to A.8 are partners and Directors of the said Chit Funds and enjoyed the deposit amount. But they failed to return the deposit amount with interest. Hence, the depositors gave a complaint to the Inspector of Police, EOW-II, Vellore and the Inspector of Police, EOW-II, Vellore, took up the investigation and laid charge sheet against both the chit funds and the Managing Director of the establishment viz., Ramasamy and other partners Madanammal, A.5 to A.8 and Sundarammal. During the course of investigation, Sundarammal was died and hence, charge sheet has been laid against the Chit Funds, A.5 to A.8 and other persons. Totally 9 accused and out of 9 accused, A.9 was died.

10. It is seen from the records that A.3-Ramasamy only had signed in the deposit receipts. Accused No.8 had also signed one or two deposit receipts. Other persons Kulasekaran, Sujatha and Geetha (A.5 to A.7) were not actively participated in the day-to-day affairs of the establishments. A.5 to A.8 were partners of A.1 and A.2 chit funds. But they have nothing to do with the day-to-day affairs of A.1 and A.2 establishments.

11. On a perusal of the statements given by the depositors as well as the records available in this case, it is seen that though Kulasekaran was a partner in A.2 establishment, he was not actively participated in the day-to-day affairs of the establishment. But Sujatha and Geetha, who are the daughters of A.3, have nothing to do with the said establishment. They were only partners in the establishment and they were not actively participated in the said establishment.

12. What is required under Section 5 of TNPID Act is that "every person responsible for the management of the affairs of the financial establishment". All the accused are family members. They had not participated in the affairs of the chit fund. But no such records have been produced by the Investigating Agency stating that A.5, A.6 and A.7 were actively participated in the day-to-day affairs of the establishment.

13. On consideration of the above material, the learned Special Judge under TNPID Act, Chennai, has come to a conclusion that accused Nos.5 to 7 are mere partners and they have no active role to play in the day-to-day administration and management affairs of the financial establishment and

accordingly, held that there is no prima facie case made out against A.5 to A.7 and accordingly, allowed the petition in Crl.M.P.No.515 of 2012 in part and discharged A.5 to A.7 alone. On a perusal of entire list of the statement of witnesses, it appears that A.8 has signed many of the receipts and A.3 and A.4 have signed one or two deposit receipts while A.5 to A.7 having nothing to do with the internal administration of A.1 and A.2 partnership firm which were running the financial institution. Except the fact that they are the family members of one of the accused Ramasamy, there is nothing on record to infer any criminal intention or any activity taking part in the running of the financial establishment. Under Section 5 of TNPID Act, every person responsible for the management of the affairs of the financial establishment are liable to be prosecuted.

14. All the accused are only the family members and they have not participated in the affairs of the chit fund and hence, viewing from any angle either on fats or on question of law, this Court is of the considered view that there is no material to continue the prosecution against accused Nos.5 to 7. A similar view expressed by the trial Court is well considered and well merited which does not suffer from any irregularity or illegality and hence, the order passed in Crl.M.P.No.515 of 2012 in respect of accused Nos.5 to 7 are hereby confirmed and Crl.R.C.No.185 of 2013 filed by L.W.1/de facto complainant is hereby devoid of merits and the same is liable to be dismissed.

15. Coming to Crl.R.C.No.1503 of 2012, it appears that as against the rejection of the discharge petition filed under Section 239 of Cr.P.C. in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009, 8th accused has preferred the criminal revision. The learned Special Judge under TNPID Act, Chennai, after going through the statements of witnesses, has come to a conclusion that there was material to proceed the criminal prosecution against the revision petitioner/A.8 and accordingly, dismissed the discharge petition.

16. The statements of witnesses given by L.W.1-K.A.Gunasekaran, L.W.4-Perumal, L.W.6-Gopala Krishnan, L.W.7-P.Venkatesan, L.W.11-Paneer Selvam, Syed Siraj Ahamad, L.W.13-P.S.Pandu, L.W.15-Pahim Ahamad, L.W.17-K.Jegannathan, L.W.18-P.Venkatesan, L.W.19-V.Gunesakaran, L.W.22-K.Sivamoorthy, L.W.28-P.Nayina Mudaliar, L.W.33-Ramaniyammal, L.W.63-Kuppusamy Naidu, L.W.41-Sasikumar, L.W.43-Suresh, L.W.44-Irsad Ahamad and the statements of other witnesses goes to show that the revision petitioner in Crl.R.C.No.1503 of 2012/8th accused has played active role in the management of the financial institution and in view of the positive material placed on record to proceed against the revision petitioner in Crl.R.C.No.1503 of 2012/8th accused, this Court is of the considered view that the trial

Court has correctly come to a conclusion that the 8th accused need not be discharged and rejected the discharge petition filed by A.8.

17. For a different reason as stated supra, after going through the above referred witnesses, who are all depositors, I am not inclined to accept the contention of the learned counsel for the revision petitioner that at the conclusion of the trial, he may not be convicted. It is the test that is required at the stage of Section 227 of Criminal Procedure Code as held by the Supreme Court in the case of Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra reported in (2008) 10 Supreme Court Cases 394, wherein, while dealing with Sections 227, 228 and 209 Cr.P.C., and its scope and ambit of powers of trial Court under Section 227, the Supreme Court has held that if two views are equally possible and the Judge is satisfied that evidence produced gives rise to suspicion only, as distinguished from grave suspicion, he would be fully within his right to discharge the accused and at this state, he is not to see whether the trial will end in conviction or not and expression "not sufficient ground for proceeding against the accused" appearing in Section 227, is explained."

18. Following the above decision and also in view of the presence of the positive material, this Court is of the considered view that A.8/revision petitioner in Crl.R.C.No.1503 of 2012 has to face the criminal trial and to prove his innocence only during the time of trial by elucidating answer in his favour in the cross-examination of those witnesses and it may not be proper for this court to discharge the revision petitioner/A.8 at this preliminary stage. In this view of the matter, the criminal revision case No.1503 of 2012 filed by the 8th accused is devoid of merits and the same is liable to be dismissed. Accordingly, the order passed by the learned Special Judge under TNPID Act, Chennai, dated 12.10.2012, in Crl.M.P.No.515 of 2012 in C.C.No.9 of 2009, in rejecting the discharge petition filed by A.8 is hereby confirmed.

19. In the result, both the criminal revision cases are dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Special Judge under TNPID Act,
   Chennai.

2. The State by Inspector of Police,
   Economic Offence Wing II,
   Vellore District.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.J.SARAVANAVEL, Advocate, S.R.No. 89653
+1cc to Mr.T.S.GOPALAN & CO Advocate, S.R.No. 89616

Order in
Crl.R.C.No.185 of 2013
and
Crl.R.C.No.1503 of 2012

MP(CO)
TR(22/02/2018)