

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2018

Pronounced on : 18.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.288 of 2018

D.Rajkumar

.. Petitioner

Vs.

1.State by

The Inspector of Police,
Economic Offence Wing-II,
Erode District.
(Crime No.7/2012)

2.G.Mohana Kumar

(Suo moto impleaded as 2nd respondent
as per order dated 02.03.2018 in
Crl.R.C.No.288 of 2018)

.. Respondents

सत्यमेव जयते

PRAYER: Criminal Revision filed under Section 397 read with 401 of Cr.P.C., to call for the records pertaining to the order dated 08.03.2017 made in Crl.M.P.No.2804 of 2016 in C.C.No.18 of 2012 on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.A.Gokulakrishnan
For Respondents : Mr.R.Suriya Prakash (for R1)
Government Advocate (Crl. Side)
No Appearance (for R2)

ORDER

The petitioner is the 5th accused in C.C.No.18 of 2012 on the file of the learned Special Judge, Coimbatore under the Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, (in short 'TANPID Act'). Originally there were totally 4 accused, wherein A1 is the company. Subsequently, the present investigation officer who had laid 2nd additional charge sheet on 29.03.2016 by arraying the petitioner as A-5, before the learned Special Judge and the same was taken on file. At present, there are totally 5 accused in the case. These accused are stated to have committed offences punishable under Sections 120(b), 420 of IPC and 5 of TANPID Act 1997. Seeking for discharge, the 5th accused who is the petitioner herein filed Crl.M.P.No.2804 of 2016 before the lower Court. The Special Court by order dated 08.03.2017 dismissed the said petition. Aggrieved by the same, the petitioner preferred a revision petition before this Court and subsequently withdrawn as not press and the petitioner is before this Court with this present revision.

2.I heard Mr.A.Gokulakrishnan, learned counsel for the petitioner

and Mr.R.Suriya Prakash, learned Government Advocate (Criminal Side) for the 1st respondent. I have also perused the records carefully. The case is listed today for final hearing, the 2nd respondent/de-facto complainant after issuance of notice did not appear on the earlier occasion as well as even today also neither the 2nd respondent nor his counsel appeared. It appears that the 2nd respondent is not interested in prosecuting this petition.

3.The case of the prosecution in brief is as follows:

The first accused M/s.Nandhu Copra, Poultry and Cattle Farms is admittedly a Financial Establishment as defined in the TANPID Act. It is an unregistered Firm of which, A2 is the Managing Director, A3 and A4 are its Managers. A5 was the person who have explained the scheme to 16 depositors.

4.According to the further case of the prosecution from more than thousand persons the accused collected deposits to the tune of Rs.1,93,44,050/- on various dates and issued appropriate receipts for the same, however they defaulted in payment despite several demands by the depositors who are witnesses to the present case. The act of the accused amounts to commission of the offence under Sections 120(b), 420 of I.P.C. and 5 of TANPID Act 1997.

5.It is contended by the learned counsel for the petitioner that he was neither a partner, employee nor any way connected to the affairs of the company and moreover it was the accused A2 to A4 were dealing with the said company and benefited out of the same. Further, it is the contention, if the petitioner is that not even one single material is available to show that he was involved in the A1 establishment. It is admitted by the petitioner that he is a real estate agent and as per the request of the A2 he was facilitating to purchase of landed property. When the case is registered he had appeared before the respondent police and the revenue authorities who investigated the case and identified the immovable properties purchased by A2 through the petitioner. Further contention of the petitioner is that he had also deposited the commission monies received from A2 at the time of facilitating the purchase of immovable property into the account of the District Revenue Officer who is the revenue authority investigating the case. Apart from that it is the submission of the learned counsel for the petitioner is that the case was registered and charge sheet was filed in the year 2012 and the same was taken on file by the trial Court in the year 2012 and the trial had already commenced.

6. Further contention of the petitioner is that totally 4 investigation officers had dealt the case. It was infact the 3rd investigation officer had raised the attachment made against the petitioner's property by giving a letter to the Sub-Registrar Office, Kavindapadi dated 10.06.2013 and further issued a letter to the petitioner dated 26.11.2014, thus giving a clean chit in the present case on hand. Two charge sheets (original charge sheet and 1st additional charge sheet) came to be filed over a period of about 3 years which does not array the petitioner as accused and after about four years, the present investigation officer with ill motive had filed the 2nd additional charge sheet dated 29.03.2016 arraying the petitioner as 5th accused. Thus according to the petitioner the lower Court erred in dismissing the petitioner's discharge petition.

7. The preliminary objections raised by the learned Government Advocate (Criminal Side) is that the petitioner had purposefully not included the de-facto complainant and contended that the de-facto complainant is the necessary party as per the Hon'ble Apex Court judgment in the case of *Mosiruddin Munshi v. Mohammed Siraj & Others* reported in (2008) 8 SCC 434. This Court had suo moto impleaded the de-facto complainant and notice was served on him for which the 2nd respondent failed to respond to the summons on several

occasions till the case was taken up today for final hearing. The main objection would be that there are enormous materials available against the accused to frame charges under the penal provisions. So far as the offence under Section 5 of the TANPID Act said to have been committed by the petitioner, as 16 depositors have seen the petitioner with other accused. Thus, there are ample material to frame the charge against the petitioner.

8.I heard Mr.A.Gokulakrishnan, learned counsel for the petitioner and Mr.R.Suriya Prakash, learned Government Advocate (Criminal Side) for the 1st respondent and perused the entire records.

9.During the course of argument, the learned counsel for the petitioner submitted the same respondent Police had given letter stating that the petitioner is no way connected with the case and now the same respondent police are taking a different footing with ulterior motive. Further, the contention of the learned counsel for the petitioner is that the present investigation officer relies on the 161 statements of the witnesses recorded by his predecessor, however, the same investigation officer had given letter stating that the petitioner has no connection to the case. Hence, the 161 statements recorded by earlier investigation officer was tampered with.

10. In so far as the petitioner herein is concerned, the Government Advocate (Criminal Side) submitted that there are materials to show that the petitioner is involved in the said offence as the petitioner had canvassed the depositors. Admittedly, no signature of the petitioner is being found anywhere on the records seized by the concerned authorities. When pointed out as to why not even one document had been seized so far by the prosecution, the Government Advocate (Criminal Side) submitted that they are yet to complete that exercise. This argument does not persuade me at all. The case of the prosecution is that the petitioner is involved in the canvassing the depositors, however it is not known as to why the police authorities are not able to seize any documents connecting the petitioner. This would go to show that he was not responsible for the management of the affairs of the Financial Establishment. Not only that, if he had been present in the said establishment, there would have been occasion for him to issue the receipts. Therefore, it would go to make out no prima facie case is made out against the petitioner.

11. The TANPID Act was brought into force by the State, after having noticed the mushroom growth of Financial Establishments not covered by the Reserve Bank of India, 1934 and that many of those

Establishments had defaulted to return the deposits and maturity to the public running to crores of rupees and thereby public resentment, which creates law and order problem in the State. Since this Act serves a larger public interest, more particularly, the avoidance of law and order problem in the State, the State Legislative has used a different language from that of the conventional language, which are used in the enactments like Negotiable Instruments Act, (Vide Section 141 of the Act). Therefore, it can be safely concluded that for prosecuting a person for an offence under Section 5 of the TANPID Act, it is enough, if it is proved that he was responsible for the management of the affairs of the Financial Establishment, which had defaulted to pay the amount to the depositors.

12. Applying the said yardstick to the facts of the present case, if we look into the statement of the witnesses, it is crystal clear that the petitioner had not issued the receipts after having collected the deposit amount from various depositors, which would surely go to show that he was not responsible for the management of the affairs of the Establishment. Thus, there are no grounds to proceed against the petitioner under Section 5 of the TANPID Act and so he is entitled for discharge.

13. In this revision, though I have referred to the statements of some of the witnesses, it can be concluded that the accused is not responsible for the collection of the deposits. I have referred to the statements of these few witnesses which shows that the petitioner was not responsible for the Management of the affairs of the Establishment. If once, it is established that he was in any manner responsible for the management of the affairs of the Establishment, then, he is liable for prosecution under several counts, i.e. in respect of each deposit, which the establishment had collected and failed to repay. However, though more than thousand depositors have not deposed anything against the petitioner, it is not known to this Court, as to how all the witnesses examined by the present investigating officer that too after a period of 3 odd years came to implicate the petitioner. This by itself goes to show that the present investigating officer differs from all the 3 investigating officers who have univocally gave a clean chit to the petitioner herein.

14. So far as the offence under Section 420 of IPC are concerned, it is held that the accused had not played any deception by collecting deposits and issuing any certificates to that effect. Hence, the offence under Section 420 of IPC is also not made against the petitioner.

15. In view of all the above, I do not find any material against the petitioner. Accordingly, the Criminal Revision Petition is allowed. The petitioner/A5 alone is discharged from the case in C.C.No.18 of 2012 on the file of the learned Special Judge, Special Court under TNPID Act Cases, Coimbatore. However, I make it clear that the observations, which I have made herein above on facts, except the observations regarding the legal position, are only for the purposes of this revision case and therefore, the same shall not influence the trial Court with regard to the other accused. But the legal propositions, which I have stated above, shall have binding on the trial Court. No costs.

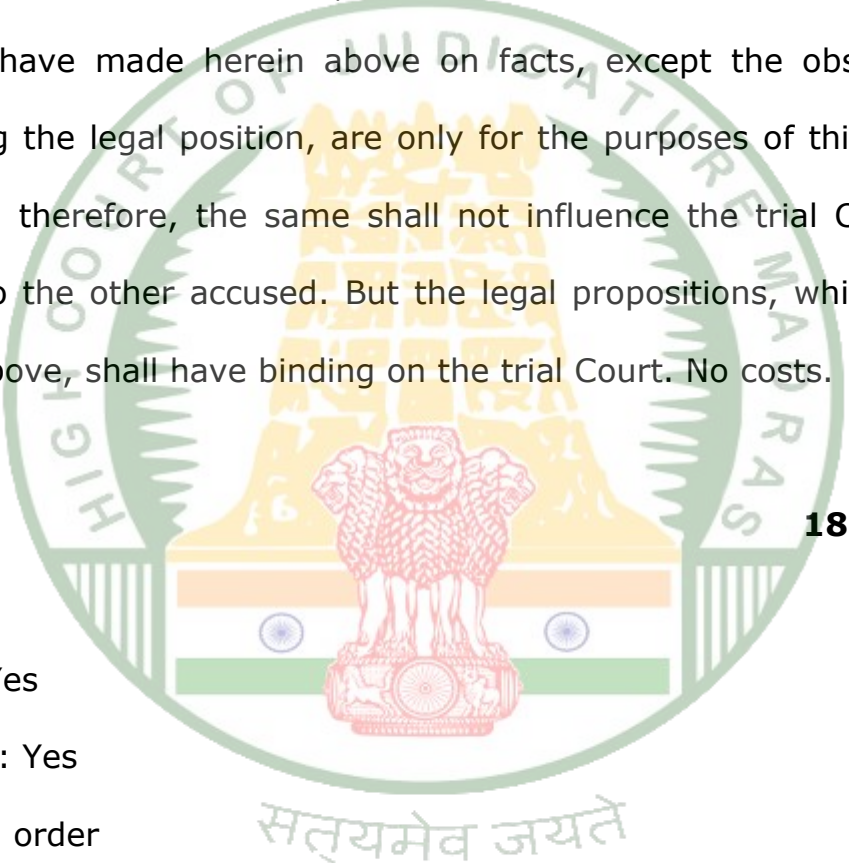
18.04.2018

vs

Index: Yes

Internet : Yes

Speaking order


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To

- 1.The Special Judge,
Special Court under TNPID Act Cases,
Coimbatore.
- 2.The Public Prosecutor,
Madras High Court,
Madras.
- 3.The Inspector of Police,
Economic Offence Wing-II,
Erode District.



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M.V.MURALIDARAN.J,

VS



Pre-delivery order made in
Crl.R.C.No.288 of 2018

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18.04.2018