IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 27.06.2018]

[Pronounced on : 24.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.376 of 2018
and
Crl.M.P.Nos.4613, 4614 and 6058 of 2018

K.Soundararajan ... Petitioner/Accused No.2

.. Vs ..

State Rep. by
Inspector of Police,
Central Crime Branch,
Egmore, Chennai - 600 008.
Now by EOW, Chennai. ... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. against the order passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai, in Crl.M.P.No.3106 of 2017 in C.C.No.1107 of 1997 (E.O.W. Cr.No.969/1996), dated 20.02.2018.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Loganathan

For Respondent : Mr.R.Surya Prakash,
Government Advocate

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ORDER

The Criminal Revision Case is directed against the order dated 20.02.2018 passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai, in Crl.M.P.No.3106 of 2017 in C.C.No.1107 of 1997 (E.O.W. Cr.No.969/1996), in dismissing the discharge petition filed by the petitioner herein/A.2.

2. The case of the prosecution is that the petitioner/A.2 along with innumerable persons prosecuted for trying the offences under Sections 120-B, 409, 420 and 506(ii) of IPC and Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 stated to be committed on the allegation stated in the

final reports. Based on the complaint given by one Mr.M.Manoharan, a case was registered in Crime No.969/1996 and FIR No.472/1996 was registered and on completion of investigation, final report appeared to have been filed on 19.02.1997. According to the complainant, a sum of Rs.13,000/- was deposited with the GNS Nidhi Ltd., on 07.07.1996 and as the said deposit was not returned, on 07.11.1996, complaint was lodged.

3. According to the revision petitioner/A.2, he has never collected any deposit amount and never persuaded the depositors by giving wrong information that he will give highest rate of interest and he has also not signed in any deposit receipt and he never stood as authorised signatory in the voucher of GNS Nidhi Limited. Therefore, the petitioner seeks to discharge him from the above case.

4. On consideration of the case and also the documents available on record, the learned Chief Metropolitan Magistrate, Allikulam, Chennai, has rejected the relief sought for by the petitioner/A.2 for discharge and hence, this criminal revision.

5. Mr.B.Kumar, learned Senior Counsel appearing for the petitioner would submit that the petition was filed by the petitioner/A.2 seeking to discharge him from the offences under Section 120-B, 409, 420 and 506(ii) of IPC and Sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, in C.C.No.1107 of 1997. According to the petitioner/A.2, the accused company viz., GNS Nidhi Pvt., Limited has made him as an employee of it for its proposed marketing work TOP NOTCH World wide Marketing Ltd., through their Man Power consultant, who selected him as a President and that this petitioner/A.2 is no way connected with this case and that he is not at all the Director or any administrative or other high ranking officer, who can mobilize funds and repay the depositors concerned in this case.

6. The learned Senior Counsel appearing for the petitioner has drawn my attention to the letter given by the petitioner on 07.05.1996 to the Executive Director, Topnotch Consultants Private Limited, Madras, wherein it is stated that he was provisionally appointed as one of the Directors from 25.03.1996 to 07.05.1996 and he worked under the said capacity till August 1996 and also drawn my attention to the resignation letter dated 01.08.1996 and contended that he never worked under any capacity to the GNS Nidhi Limited and the Topnotch Company is the only company created by GNS Nidhi Limited and hence, he has not associated with the said GNS Nidhi Limited Company.

7. The learned Senior Counsel appearing for the petitioner also drawn my attention to the order passed by the learned Principal Sessions Judge, Chennai, in Crl.O.P.No.7956 of 1996 dated 24.12.1996, wherein, this accused was granted bail in this case and also drawn my attention to the certain observations made in para 5 of the said order.

8. After referring the final report filed by the respondent police before the learned Chief Metropolitan Magistrate, Egmore, Chennai, in C.C.No.1107 of 1997, the learned Senior Counsel appearing for the petitioner would submit that the petitioner/A.2 is no way connected with the day-to-day affairs and administration of GNS Nidhi Limited and he only worked under the Topnotch company and that post also he resigned within a period of five to six months and further, the said GNS Nidhi Limited is not made as a party and therefore, in the absence of the GNS Nidhi Limited as a party, the prosecution against him cannot be permitted to continue.

9. Lastly, the learned Senior Counsel for the petitioner also drawn my attention to the statements of witnesses viz., S.Ramachandran, Ganesan and other listed witnesses and would submit that none of the witnesses speak about any role as a facilitator or a depositor or to indicate that the petitioner is actively involved in the day-to-day affairs of the GNS Nidhi Limited and accordingly, sought for discharge from this case.

10. Learned Government Advocate appearing for the respondent State would contend that a case was registered in Chennai City Central Crime Branch X Crime No.969/1996 for the offences under Sections 120-B, 409, 420, 506(ii) IPC and Sections 3, 4, 5 and 6 of the Prize Chit and Money Circulation Scheme (Banning) Act, 1978 based upon the complaint given by one Manoharan. He has drawn my attention to the statement of witness Ramanujam, General Manager of GNS Nidhi Limited, statement of Ramachandran, Maintenance Contractor of GNS Nidhi Limited, statement of S.Ganesan, P.A. to Karunakaran, Chairman of GNS Nidhi Limited, statement of V.Subramanian, Staff selection work in GNS Nidhi Limited, statement of M.Rajaraman, Vice President of GNS Nidhi Limited and the statement of Tmt.Poosambika, one of the depositor. The learned Government Advocate further submitted that the statements of these witnesses clearly indicate the active role played by the petitioner herein in the management of the GNS Nidhi Limited. The learned Government Advocate also drawn my attention to the appointment letter of Ramanujam as a General Manager and contended that the case is long pending for more number of years and hence, prayed for

dismissal of the petition.

11. After hearing both the parties and perusing the statements of witnesses recorded under Section 161 of Cr.P.C. and also the other documents filed by both the parties, it is seen that the Directors and Managers of the GNS Nidhi Limited gave false assurance to the depositors and promised to give higher rater of interest for deposits and also offered other attractive schemes. The innocent public believed the said false assurance and invested their hard earned money in the said financial institution. Even after the maturity of the deposits, the said finance company did not repay the maturity amount to the depositors. In this case, the said company overall defaulted the amount is, Rs.10 crores to 7718 depositors and as per the police complaint, defaulted amount is Rs.67,35,420/- to 85 depositors.

12. After perusing the extract from Minutes of the meeting of the Board of Directors, GNS Nidhi Limited which is stated to be held on 12.06.1996 and also the statements of witnesses referred by the learned Government Advocate and also the other documents filed by the prosecution, I am of the considered view that there is sufficient material available to presume that the petitioner herein/A.2 is involved and actively participated in the day-to-day affairs of the company and as such, the credibility and reliability of the statements of witnesses above referred person has to be tested only during the time of the trial. Furthermore, as per Section 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

13. Hence, the contention raised by the learned Senior Counsel appearing for the petitioner that the petitioner cannot be proceeded in the absence of the company cannot be entertained at present cannot be accepted. As such, in his capacity as alleged by the listed witnesses, he can be tried and prosecuted according to the provisions of the Criminal Procedure Code and hence, all the points raised by the petitioner are negatived and in view of the statement of the above referred witnesses and the documents collected by the Investigating Agency during the investigation, I do not find any irregularity or illegality in the order passed by the learned Chief Judicial Metro Polital Magistrate,

Chennai and hence, the same does not call for any interference by this Court.

14. In this view of the matter, this Criminal Revision Case is dismissed and the order passed by the learned Chief Metropolitan Magistrate, Allikulam, Chennai, in Crl.M.P.No.3106 of 2017 in C.C.No.1107 of 1997, dated 20.02.2018, is confirmed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Chief Metropolitan Magistrate,
   Allikulam, Chennai.

2. The Inspector of Police,
   Central Crime Branch,
   Egmore, Chennai - 600 008.
   Now by EOW, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1 cc to MR.R.LOGANATHAN Advocate SR.NO. 49833

Order
in
Crl.R.C.No.376 of 2018

NM(CO)
ASK(10/08/2018)