

BAIL SLIP

The Appellant/(Accused 2 viz., S.Parimalam in C.C.No.28 of 2008 dated 26.11.2009 on the file of the Special Court under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Coimbatore) was directed to be released on bail as per order of this Court dated 14.12.2009 made in CRL MP No.1 of 2009 in CRL A No.784 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.784 of 2009
and CRL.R.C.No.933 of 2013

CRL.A.No.784 of 2009

1.V.S.C.K.Financiers,
Mettupalayam Road,
K.Vadamadurai Post,
Coimbatore 641 017.
Rep. by Parimalam

2.S.Parimalam

.. Appellants

Vs

State rep. by

The Inspector of Police,
Economic Offences Wing-2,
Coimbatore.

(Crime No.12 of 2003)

.. Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment dated 26.11.2009 made in C.C.No.28 of 2008 on the file of the Special Court under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Coimbatore.

For Appellants : Mr.B.Kumarasamy

For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

CRL.R.C.No.933 of 2013

R.Uma Mageshwari

.. Petitioner

Vs

1.V.S.C.K.Financiers,
Mettupalayam Road,
K.Vadamadurai Post,
Coimbatore-17.

2.S.Parimalam

3.The State rep. by
The Inspector of Police,
Economic Offences Wing-II,
Coimbatore.
(Crime No.12 of 2003)

.. Respondents

Criminal Revision Petition filed under Section 379 r/w 401 of Cr.P.C. r/w 11 of TNPID Act, 1997 praying to set aside the judgment dated 26.11.2009 made in C.C.No.28 of 2008 on the file of the Special Court under Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Coimbatore.

For Petitioner : Mr.P.S.Kothandaraman

For R1 and R2 : Mr.B.Kumarasamy

For R3 : Mrs.P.Kritika Kamal, GA (Crl. Side)

C O M M O N J U D G M E N T

Inasmuch as both Criminal Revision Petition and Criminal Appeal emerge from one and the same judgment of the trial Court, these cases are considered and decided by this common judgment.

2.The facts leading to the filing of the instant Criminal Appeal and Criminal Revision Case are briefly stated as under:

2.1.It is the case of the prosecution that V.S.C.K. Financiers (A1) run by S.Parimalam (A2), S.Lalitha (A3), V.S.Chinnakittusamy (A4) and V.Selvaraj (A5) have collected deposits from the public and had failed to return the same on the due dates.

2.2.On the complaint dated 04.05.2003 (Ex.P28) given by one R.Uma Maheswari (PW10), K.Subramaniam (PW19), Inspector of

Police, registered a case in Crime No.12 of 2003 for the offence under Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 (for brevity "the Act") against the finance company and the four named accused and prepared the printed FIR (Ex.P52).

2.3. Investigation was conducted by K.Subramaniam (PW19), who examined the witnesses and collected the deposit receipts and filed final report against five accused for the offence under Section 5 of the Act relating to 19 depositors to the tune of Rs.26,52,900/- (principal + interest).

2.4. The charge sheet was taken on file as C.C.No.72 of 2004 by the Special Court, TNPID Act, Chennai and after the constitution of the Special Court under the TNPID Act at Coimbatore, the case was transferred there and was re-numbered as C.C.No.28 of 2008.

2.5. On the appearance of the accused, charges were framed and the accused pleaded "not guilty".

2.6. To prove the case, the prosecution examined 21 witnesses and marked 54 exhibits. When the accused were questioned about the incriminating circumstances appearing against them under Section 313 Cr.P.C., they denied the same. On behalf of the accused, 7 witnesses were examined and 9 documents were marked.

2.7. During the course of trial, the accused came forward to settle with Vijayakumari (PW4), Rukmani (PW5) and PW13 to PW17 viz. Jayaraj, M.Palanisamy, G.Kalidoss, S.N.Saravanan and T.Ramachandran, respectively and paid the amounts due to them and thus, the offences were compounded, in respect of those counts. The trial Court has recorded this fact in paragraph No.39 of the judgment and has held that the prosecution have proved their case only with regard to the failure of the accused to pay to 11 depositors.

2.8. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 26.11.2009 in C.C.No.28 of 2008, has acquitted S.Lalitha (A3), V.S.Chinnakittusamy (A4) and V.Selvaraj (A5) and has convicted V.S.C.K. Financiers (A1) and S.Parimalam (A2) under Section 5 of the Act and slapped sentence on them as under :

Name of the accused	Sentence
V.S.C.K. Financiers (A1)	Rs.10,000/- fine

Name of the accused	Sentence
Parimalam (A2)	one year rigorous imprisonment (11 counts to run concurrently) and Rs.1,000/- fine for each count (Rs.11,000/- for 11 counts) in default to undergo six months rigorous imprisonment for each count

2.9.After paying the fine amount, Parimalam (A2) filed Crl.A.No.784 of 2009 challenging the conviction and sentence slapped against her. Uma Maheswari, the de facto complainant has filed Crl.R.C.No.933 of 2013 under Section 379 r/w 401 Cr.P.C. for enhancement of sentence.

3.Heard Mr.B.Kumarasamy, learned counsel for Parimalam (A2), Mr.P.S.Kothandaraman, learned counsel for Uma Maheswari (de facto complainant) and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

4.It is seen that during the pendency of this appeal, Parimalam (A2) has deposited a total sum of Rs.12,85,381/- with the competent authority under Section 5 of the Act, viz. the District Revenue Officer, Coimbatore.

5.Today, Mrs.R.Sharmila, Tahsildar, TNPID Section i/c, Collectorate, Coimbatore, Mr.P.Babu, Senior Revenue Inspector, TNPID Section, Collectorate, Coimbatore and Ms.R.Usha, Sub Inspector of Police, EOW-II, Coimbatore are present before this Court.

6.The records of the competent authority show that a total sum of Rs.12,85,381/- deposited by Parimalam (A2) as on 25.09.2015 is available and that, the competent authority had re-deposited the amount in a fixed deposit account with State Bank of India, Oppanakara Branch, Coimbatore and as on 29.10.2018, a sum of Rs.16,82,213/- is available. Parimalam (A2) has filed an affidavit dated 26.11.2018, wherein, at paragraph No.7, she has stated as follows:

"7.I submit that I deposited the entire amount before the competent authority. The names of the depositors are as follows :

Sl.N o.	Name & Address	Rank before the trial Court	Amount deposited	Exhibi ts
1.	Mr.P.Ravichandran S/o.Palaniappan, Therkupalayam, Coimbatore.	PW-1	Rs.60,000/- 04.09.1999	Ex.P1
2.	Mr.N.Sakthivel S/o.Natchimuthu, Poosaripalayam, Coimbatore.	PW-2	Rs.1,00,000/- 01.09.1999 each Rs.50,000/-	Ex.P2 & Ex.P3
3.	Mrs.Vijayalakshmi W/o.Raghuraman No.19, Chitra Nagar, Thoppampatti, Vadamadurai Post, Coimbatore.	PW-3	Rs.60,000/- 21.05.2001	Ex.P6
4.	Mr.Ramadoss S/o.Palanisamy, No.127, Kamarajar Road, Varadharajapuram, Coimbatore.	PW-6	Rs.50,000/- 03.04.1998 each Rs.25,000/-	Ex.P14 & Ex.P15
5.	Mr.K.Selvaraj S/o.Karuppana Nadar Thoppampatti Pirivu, Coimbatore.	PW-7	Rs.50,000/- 22.07.2002	Ex.P17
6.	Mr.Anandha Padmanaban No.45, Dr.Danial Nagar, Thoppampatti Pirivu, Coimbatore.	PW-8	Rs.20,000/- 07.09.1995	Ex.P19
7.	Mrs.Jeyalakshmi W/o.Varadaraj No.18/15, Chitra Nagar, Vadamadurai Post, Thoppampatti Pirivu, Coimbatore.	PW-9	Rs.75,000/- 21.01.2000 Rs.25,000/- 01.01.2002 Rs.50,000/-	Ex.P21 & Ex.P22

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Sl.No.	Name & Address	Rank before the trial Court	Amount deposited	Exhibits
8.	Mrs.Uma Maheswari W/o.Balakrishnan, No.27, Chitra Nagar, Thoppampatti Pirivu, K.Vadamadurai, Coimbatore.	PW-10	Rs.2,50,000/- 01.11.1999 Rs.50,000/- 01.11.1999 Rs.50,000/- 22.04.1999 Rs.50,000/- 14.02.2001 Rs.1,00,000/-	Ex.P24 to Ex.P26
9.	Mr.Kasthuri S/o.Chinnappa Naidu No.27, Chitra Nagar, Thoppampatti Pirivu, K.Vadamadurai, Coimbatore.	PW-11	Rs.3,00,000/- 20.02.2001 Rs.50,000/- 20.02.2001 Rs.40,000/- 01.10.2001 Rs.60,000/- 05.05.2001 Rs.50,000/- 01.06.2001 Rs.50,000/- 24.07.2002 Rs.50,000/-	Ex.P29 to Ex.P34
10.	Mr.Umapathy S/o.Dhakshinamurthy No.4/404, VKL Street, NGGO Colony, Coimbatore-22.	PW-12	Rs.75,000/- 16.02.2000 Rs.50,000/- 16.02.2000 Rs.25,000/-	Ex.P36 & Ex.P37
11.	Mr.Loganathan, S/o.Palanisamy, T1/A, Gandhi Nagar, Therkupalayam Post, Periyanaickenpalayam, Coimbatore-20.	PW-20	Rs.70,000/-	Ex.P55
In Total			Rs.11,10,000/-	

7.Apart from the 11 depositors named above, Parimalam (A2) is required to give a sum of Rs.2,25,000/- towards principal to one Rajagopal, who had died even during the trial and therefore,

was not examined as witness. However, the said Rajagopal is none other than the father of Uma Maheswari (PW10), the de facto complainant. Now, the amount of Rs.16,82,213/- available with the competent authority, not only covers the deposits of the 11 depositors named above, but also covers the deposit of Rs.2,25,000/- by the deceased Rajagopal.

8.Learned counsel for Uma Maheswari/de facto complainant submitted that the accused should be directed to repay the amount with interest.

9.However, learned counsel for Parimalam (A2) has submitted that she has absolutely no means to make any further payment and that, the only house in which, she was living has been attached by the competent authority.

10.This Court gave its anxious consideration to the rival submissions.

11.On a reading of the evidence on record, it is seen that the expansion of V.S.C.K. is V.S.Chinnakittusamy, which is the name of A4, who is the paternal uncle of Parimalam (A2). Parimalam (A2) had merely lent her name and signed the deposit receipts issued by V.S.C.K. Financiers, trusting her paternal uncle V.S.Chinnakittusamy (A4). Evidence has been adduced by the accused, viz. Lalitha (A3), V.S.Chinnakittusamy (A4) and Selvaraj (A5) that they were not running the affairs of V.S.C.K. Financiers and that had found acceptance with the trial Court, resulting in their acquittal. The State has not chosen to file appeal against their acquittal.

12.In the opinion of this Court, it was V.S.Chinnakittusamy (A4), who has been running the affairs of V.S.C.K. Financiers from the backstage and Parimalam (A2) was merely a puppet. An offence under Section 5 of the Act does not require even mens rea and mere default in repayment to a depositor would attract a sentence upto 10 years. Of course, there is no minimum sentence prescribed under the Act and therefore, the Court has the discretion to award sentence depending upon the facts of each case.

13.In this case, though the trial Court has recorded the conviction and sentence in respect of 11 depositors, during the pendency of this appeal, Parimalam (A2) has deposited the amounts towards the principal due to 12 depositors. Since V.S.C.K. Financiers has committed default, inasmuch as it had failed to repay the depositors within the time prescribed in the deposit receipts, the conviction for the offence under Section 5 of the Act cannot be set aside. But, the subsequent conduct of Parimalam (A2) in coming forward to

deposit the amounts, during the pendency of the appeal is a good ground for reducing the substantive sentence of imprisonment.

14.Taking into consideration the fact that a total sum of Rs.16,82,213/- is now available with the competent authority for disbursal to 12 depositors, this Court reduces the substantive sentence of imprisonment imposed on Parimalam (A2) by the trial Court, to imprisonment till the rising of this Court.

15.Today, Parimalam (A2) is present before this Court to undergo the sentence. As regards CrI.R.C.No.933 of 2013, this is not a fit case to enhance the sentence, especially, in the light of the fact that Parimalam (A2) has made payments during the pendency of the appeal, as stated above.

16.Now, this Court directs the competent authority to disburse the principal amounts out of Rs.16,82,213/- to the 12 depositors (11 + 1) and then the remaining amount shall be distributed proportionately to the 12 depositors towards interest. As regards the 7 depositors, who had compounded during the pendency of the trial under Section 5A(1) of the Act, their claims have attained finality and their claims cannot be adjudicated by the competent authority or the Special Court, in view of Section 5A(2) of the TNPID Act.

17.It is also represented that out of 12 depositors, P.Ravichandran (PW1), Sakthivel (PW2), K.Selvaraj (PW7), S.Kasthuri (PW11) and Rajagopal (who was not examined in the trial Court) have died. In such perspective of the matter, it is open to the Special Court and the competent authority to disburse the amount to the legal heirs of the deceased depositors in accordance with law, after due enquiry.

With the above modification in sentence, the Criminal Appeal is partly allowed and the Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1.The Special Court under TNPID Act,
Coimbatore.

2.The Inspector of Police,
Economic Offences Wing-II,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.S.Kothandaraman, Advocate Sr.No.82682
+1 cc to M/s.S.Gunalan, Advocate Sr.No.82566 (06.03.2019)

KS (CO)
CSL/03.01.2019

CRL.A.No.784 of 2009
AND
CRL.R.C.No.933 of 2013



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