

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.223 of 2013

State rep. By
The Inspector of Police
Economic Offences Wing - II
Coimbatore.
(Crime No.15/2005) .. Appellant/ petitioner

.. Vs ..

1. M/s Ravi & Co
D.No.227, Thiyagi Kumaran Market
Coimbatore.Rep by 2 to 4
2. D.Selvaraj
3. Saroja
4. S.Ravi .. Respondents/Accused(A1 to A4)

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the Judgment of acquittal of the respondents / accused (A-1 to A-4) passed in C.C.No.64/2008, dated 17.12.2012 by the Hon'ble Special Court for TNPID Act Cases, Coimbatore.

For Appellant : Mr.R.Ravichandran
Government Advocate (Crl. Side)

For Respondents : ***Mr.M.Ramamoorthy**
For Mr.H.Rajasekar

JUDGMENT

Seeking to set aside the Judgment of acquittal of the respondents / accused (A-1 to A-4) passed in C.C.No.64/2008, dated 17.12.2012 by the Hon'ble Special Court for TNPID Act Cases, Coimbatore, the State is before this Court with this Criminal Appeal.

2.It is the case of the prosecution that the respondents 2 to 4 were running a financial institution

in the name and style of M/s.Ravi & Co viz., the 1st respondent herein, and collected deposits. While running the said financial institution, they had defrauded the general public by way of collecting Rs.23,35,000/-. This resulted in registration of a case on 22.10.2005 in Coimbatore Economic Offences Wing-II, Coimbatore, in Crime No.15/2005 under Section 420 IPC & Section 5 of TNPID Act, 1997.

3.After completion of the investigation, a charge sheet has been filed on 20.01.2006, under Sections 420,406 IPC r/w 120-B IPC & Section 5 of TNPID Act, for default of Rs.37,90,600/-. Out of the said amount, deposit amount was Rs.23,35,000/- and 12% interest calculated from the date of deposit to the date of default between 10.08.2001 and 01.02.2004 which worked out to Rs.14,55,600/-, from three depositors. Final Report filed by the Investigating Officer was taken on file in C.C.No.12 of 2006 before the Special Court under TNPID Act Cases, Chennai. Subsequently, the case was transferred to the Special Court under TNPID Act Cases, Coimbatore and re-numbered as C.C.No.64 of 2008.

4.In order to prove the case of the prosecution, as many as 6 witnesses, P.W.1 to 6 were examined and 20 documents, Ex.P.1 to 20 were marked. After completion of prosecution evidence, the incriminating materials were put before the respondents. The respondents denied all the evidences are false.

5.After completion of the trial and considering the rival submissions made on either side, the learned Special Judge, Special Court for TNPID Act Cases, Coimbatore, has come to the conclusion that the appellant has not proved the case as against the respondents/accused and hence, the respondents were acquitted by the trial Court by its Judgment dated 17.12.2012 under Section 5 of TNPID Act, 1997 in C.C.No.64 of 2008.

6.Against the said order of acquittal, the State has preferred the present appeal before this Court.

7.The learned Government Advocate (Criminal Side) appearing for the appellant would submit that P.W.1 is the daughter of the complainant and she herself is the depositor in M/s.Ravi & Co and deposited a sum of Rs.1,00,000/- during the month of February 2003. P.W.1 has clearly stated about the fixed deposit receipts, which were marked as Exs.P.1 to P.11. During cross examination, P.W.1 has deposed that she accompanied with her father for 2 to 3 times while depositing money with

M/s.Ravi & Co., and she does not aware of the deposits made by her parents during the years 1996 to 2002. Further, P.Ws.2 to 6 have clearly stated about the deposits made in the respondents company. Exs.P.1 to P.11, fixed deposit receipts for the money deposited by the defacto complainant, his wife and his daughter were signed and issued by the respondents/ accused in their own handwriting and in some places, the company's seal is available. Exs.P.15 to P.18 & P.20 reveal that there were financial transactions between the defacto complainant and the respondents/accused. The learned Government Advocate (Criminal side) further contended that prosecution was able to prove the case beyond reasonable doubt, but, the trial Court has failed to appreciate the materials placed before it and acquitted the respondents.

8.The learned counsel appearing for the respondents would submit that the appellant has not proved that the respondents were running a finance company and invited the general public to invest in their company. P.W.1 has clearly deposed in her statement that the respondents were running a grocery shop. The main witness for the case, the defacto complainant was not examined during trial, instead his daughter, P.W.1 was examined. Even she personally not aware of anything about the defacto complainant and his wife's financial transactions with the respondents. P.W.1 came to know about the fixed deposits of her parents with the respondents only after seeing the fixed deposit receipts, and that also not signed with the revenue stamps.

9.The learned counsel for the respondents further contended that more than 1 person should deposit in a finance company to attract the Tamil Nadu Protection of Depositors (Financial Establishments) Act 1997. Whereas, the daughter of the defacto complainant only examined as witness and the fixed deposit receipts submitted by the defacto complainant is not a printed one. More particularly the signatures were not afixed in stamp papers. In further, the prosecution has not examined any other person except P.W.1 to prove that there are other general public also invested in the first respondent's company. Therefore, it shows that the prosecution has not established the case beyond the reasonable doubt. Hence, the trial Court has rightly came to the conclusion that the respondents are not found guilty under Section 5 of TNPID Act, and acquitted under Section 248 of Cr.P.C., also. Therefore, there is no interference of this Court is required since, the Special Court for TNPID Act Cases, Coimbatore, has given cogent reason to acquit the respondents.

10. Heard both sides and perused the materials available on record.

11. Though the trial Court acquitted the respondents, prosecution side has examined as many as 6 witnesses and marked Exs.P.1 to P.20. Out of which, Exs.P.14,15,16, 18 and 20 clearly show that there are fixed deposits made by the defacto complainant with the respondents company. Further, the mother of P.W.1 has already preferred a complaint before the P-1 Police Station. No action was taken on the complaint, for which, the mother of the P.W.1 also approached the Judicial Magistrate No.V. The learned Judicial Magistrate No.V forwarded the same to the respondent police. It shows that there are financial transactions between the mother of P.W.1 and the respondents/accused. The learned counsel appearing for the respondents contended that more than 1 person should deposit in a finance company to attract the Tamil Nadu Protection of Depositors (Financial Establishments) Act 1997. Since, the defacto complainant, his wife and their daughter, P.W.1 were deposited their money in respondents company, which leads to three persons. Hence, even as per the contention of the learned counsel for the respondents the Tamil Nadu Protection of Depositors (Financial Establishments) Act 1997, is very well applicable to the present case. Even though, the investigation officer failed to send the signatures of the accused to the handwriting expert to get their opinion, signatures contained in the fixed deposit receipts are not denied by the respondents. As per Section 73 of Indian Evidence Act, the trial Court itself can compare with the signatures contained in the fixed deposit receipts and Exs.C.1 to C.3. Hence, the same was compared with by the trial Court and the signatures are also matching with the signatures contained in the Exs.P.1 to P.11. Though the prosecution was able to prove the case beyond the reasonable doubt from the evidences of P.Ws.1 to 6, the trial Court has failed to consider these aspects. The respondents on the defence, whose witnesses were examined as D.Ws.1 to D.W.3, have not dis-proved the case of the prosecution and the defence taken by the respondents is not proved in the manner known to law. Being the appellate Court, this Court has to re- appreciate the entire evidences and has to give independent findings. Therefore, on a perusal of the entire materials available on record, this Court finds that the prosecution has proved its case by leading cogent evidence in the manner known to law and the trial Court has failed to consider the oral and documentary evidence produced by the prosecution and simply dismissed the case of the

prosecution and acquitted the respondents.

12. For the reasons stated above, this Court finds that the respondents committed offences punishable under Sections 420, 406 IPC r/w 120-B IPC & Section 5 of TNPID Act. Therefore, the judgment passed by the Special Court for TNPID Act Cases, Coimbatore in C.C.No.64 of 2008 dated 17.12.2012 is set aside. Accordingly, Criminal Appeal is allowed. The respondents are directed to appear before this Court on 18.09.2018 for further proceedings and the appellant is directed to ensure the appearance of the respondents before this Court on 18.09.2018.

Question of Sentence

This Criminal Appeal having been posted on this day for "Question of Sentence". In Pursuance the order of this court dated 06/09/2018 and made herein in the presence of the above said advocates, this court made the following order :

1. In compliance with the order of this Court dated 06.09.2018, the respondents 2 to 4/accused appeared before this Court on 18.09.2018 and they have been questioned the sentence to be imposed on them. The respondents 2 to 4/accused stated that they have already deposited the amount and prays leniency of the Court to award lessor punishment.

2. The learned counsel for the respondents would submit that the respondents paid Rs.10,00,000/- (Rupees Ten Lakhs) on 21.12.2012 by way of fixed deposit at Indian Bank, Peelamedu Branch, in favour of the Competent Authority and District Revenue Officer, CBE. As stated by the respondents 2 to 4/accused that they have deposited the amount, is not correct. Further, the respondents 2 to 4 committed offences punishable under Sections 420, 406 IPC r/w 120-B IPC & Section 5 of TNPID Act.

3. Considering the representation made by the respondents 2 to 4/accused and the mitigating circumstances viz., their age and family circumstances and in order to meet the ends of justice, the respondents 2 to 4/accused are convicted and sentenced to undergo rigorous imprisonment for a period of one year each for the offences under Sections 420, 406 IPC r/w 120-B IPC & Section 5 of TNPID Act Cases, and pay a fine of Rs.1,00,000/- (Rupees One Lakh) each in default to undergo for a further period of two months simple

imprisonment. Also the respondents 2 to 4 are liable to pay sum of Rs.37,90,600/- ****with interest from the date of chargesheet** as compensation under Section 357(3) of Cr.P.C. Once the compensation amount is deposited, i.e., Rs.37,90,600/- with interest, after deducting the amount already deposited by the respondents 2 to 4, the same may be paid to the depositors. If the depositors are died, their legal heirs can claim the amount by producing necessary legal heir certificate before the competent authorities in accordance with law. The sentence imposed for all the offences shall run concurrently and the period which already, if any undergone by the respondents 2 to 4 is ordered to be set off.

Jer

Sd/-

Assistant Registrar(Co)

dt.18.9.2018

* & ** Corrected as per order of this Court dated 20.9.2018 and made herein sd/-

Assistant Registrar(CS V)

dt.20.9.2018

//True Copy//

Sub Assistant Registrar

To

1. The Special Court for TNPID Act Cases, Coimbatore.

To be substituted to the order already despatched on 18.9.2018

2.The Inspector of Police, Economic offences wing II, Coimbatore.

3.The Judicial Magistrate, Coimbatore.

4.The Chief Judicial Magistrate, coimbatore

5.The District Collector,Coimbatore.

6. The Superintendent Central Prison Coimbatore.

7. The superintendent
Special Prison for Women
Coimbatore

8.The Special Prosecutor for TNPID CASES,
High court Madras.

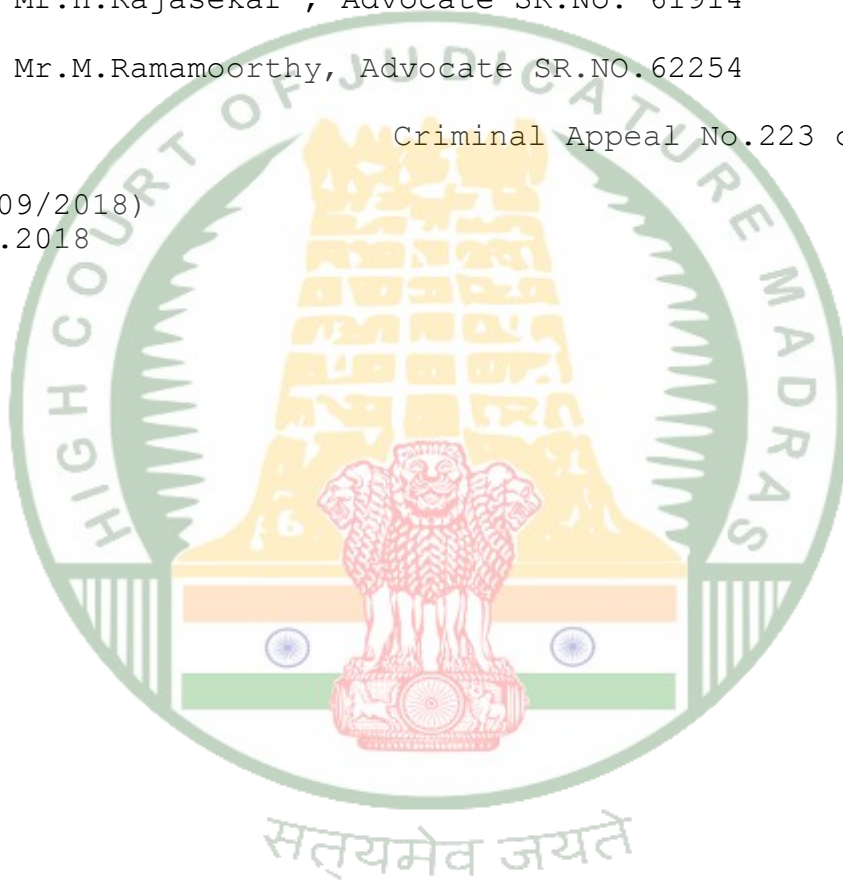
+1cc to Mr.M.Ramamoorthy , Advocate SR.No. 64362

+1cc to Mr.H.Rajasekar , Advocate SR.No. 61914

+2cc to Mr.M.Ramamoorthy, Advocate SR.NO.62254

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ASK(18/09/2018)
sm:20.9.2018



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